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Rules and Regulations

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 2—RULES OF PRACTICE

PART 3—RULES OF PROCEDURE IN CONTRACT APPEALS

Revision of Rules

The Commission has adopted a revised 10 CFR Part 2, "Rules of Practice", governing procedure in all proceedings under the Atomic Energy Act of 1954, as amended, for granting, sustaining, revoking, or amending any license, authorization or construction permit, or application to transfer control of a licensed facility; public rule making; the disposition of appeals from decisions of contracting officers in disputes under contracts or subcontracts of the Atomic Energy Commission; and declaring a patent to be affected with the public interest or granting a patent license.

Part 2, which has been in effect since March, 1956, has been amended from time to time. On February 1, 1961, the Commission adopted "A Report on the Regulatory Program of the Atomic Energy Commission", which was the basis of a recent reorganization of its regulatory staff and functions. That Report recommended further action directed toward development of the Commission's procedural as well as substantive regulations.

In order to expedite and improve the performance of its regulatory functions, the Commission has adopted the following amendments to its regulations. The amendments are designed to expedite proceedings without sacrificing the fair and impartial consideration and adjudication of issues, and to embody the results of experience gained under the existing rules while incorporating useful provisions of the rules of practice or other regulatory agencies and of the Federal Rules of Civil Procedure.

The existing 10 CFR Part 3, "Rules of Procedure in Contract Appeals", largely incorporates by reference pertinent provisions of Part 2. The revision of Part 2 now incorporates the substance of Part 3 as a new Subpart D.

Inasmuch as this amendment relates to agency procedure and practice, the Commission has found that general notice of proposed rule making and public procedure thereon are unnecessary, and that good cause exists why this amendment should be made effective forty-five (45) days after publication in the FEDERAL REGISTER. The Commission will continue to study the problems involved in these rules with a view to making such further changes as may from time to time appear desirable. Members of the bar, commission contractors, and others are invited to submit comments and suggestions to the Commission. Comments and suggestions should be addressed to the Secretary, United States Atomic Energy Commission, Washington 25, D.C., and will be reviewed by the Commission prior to the effective date of these rules.

Pursuant to the Administrative Procedure Act and the Atomic Energy Act of 1954, as amended, the following rules are published as a document subject to codification, to be effective forty-five (45) days after publication in the FEDERAL REGISTER.

On the effective date of these rules, 10 CFR Part 3, "Rules of Practice in Contract Appeals" is repealed.

Dated at Germantown, Md., this 8th day of January 1962.

For the Atomic Energy Commission.

WOODFORD B. McCOOL,
Secretary.

Sec.

AUTHORITY: §§ 2.1 to 2.914 issued under sec. 161, 68 Stat. 948, as amended; 42 U.S.C. 2201.

§ 2.1 Scope.

This part governs the conduct of all proceedings under the Atomic Energy Act of 1954, as amended, for (a) granting, suspending, revoking, amending, or taking other action with respect to any license, authorization, construction permit, or application to transfer a license; (b) public rule making; (c) appeals from decisions of contracting officers in disputes arising, or alleged to arise, under a contract with the Atomic Energy Commission or a subcontract under such a contract; and (d) declaring a patent to be affected with the public interest, and the granting of a patent license under section 153 of the Act, but excluding all other patent matters.[1]

[1] The specifications, pursuant to Section 156 of the Act, for patent licenses to use Commission-held patents or those declared subject to licensing under Section 153 a. of the Act, are set forth in Part 81 of this chapter. Patent Compensation Board proceedings under Sections 157 and 173 of the Act are governed by Part 80 of this chapter.

§ 2.2 Subparts.

Each subpart other than Subpart G sets forth special rules applicable to the type of proceeding described in the first section of that subpart. Subpart G sets forth general rules applicable to all types of proceedings except rule making, and should be read in conjunction with the subpart governing a particular proceeding. Subpart I sets forth special procedures to be followed in proceedings in order to safeguard and prevent disclosure of Restricted Data.

§ 2.3 Resolution of conflict.

In any conflict between a general rule in Subpart G of this part and a special rule in another subpart applicable to a particular type of proceeding, the special rule governs.

§ 2.4 Definitions.

Words or phrases which are defined in the Atomic Energy Act of 1954, as amended, and in this chapter have the same meaning when used in this part. In addition, as used in this part:

(a) "ACRS" means the Advisory Committee on Reactor Safeguards established by the Act.

(b) "Act" means the Atomic Energy Act of 1954, as amended (68 Stat. 919).

(c) "Adjudication" means the process for the formulation of an order for the final disposition of the whole or any part of any proceeding subject to this part, other than rule making.

(d) "Authorization" means an authorization or order issued pursuant to Part 115 of this chapter authorizing construction or operation of certain nuclear reactors.

(e) "Commission" means the Commission of five members or a quorum thereof sitting as a body, as provided by section 21 of the Act, or any officer to whom has been delegated authority pursuant to section 161n of the Act.

(f) "Director of Regulation" means the Director of Regulation or any officer to whom he has delegated authority to act.

(g) "Hearing Examiner" means an individual appointed pursuant to section 11 of the Administrative Procedure Act to conduct proceedings subject to this part.

(h) "License" means a license, construction permit, or authorization issued by the Commission.

(i) "Licensee" means a person who is authorized to conduct activities under a license, construction permit, or authorization issued by the Commission.

(j) "Public Document Room" means the place at 1717 H Street NW., Washington, D.C., at which public records of the Commission will ordinarily be made available for inspection.

(k) "Regulatory Staff" means the Director of Regulation, the offices and divisions under his authority, and such legal counsel as may be assigned by the General Counsel.

(l) "Secretary" means the Secretary to the Commission.

Subpart A—Procedure for Issuance, Amendment, Transfer, or Renewal of a License

§ 2.100 Scope of subpart.

This subpart prescribes the procedures for issuance of a license; amendment of a license at the request of the licensee; and transfer and renewal of a license.

§ 2.101 Filing of application.

(a) An application for a license or an amendment to a license shall be filed with the Director of Regulation as prescribed by the applicable provisions of this chapter. A prospective applicant may confer informally with the regulatory staff prior to the filing of an application. Each application will be assigned a docket number.

(b) An applicant for a license for a facility or to receive waste radioactive material from other persons for the purpose of packaging, storage or disposal, shall serve a copy of the application on the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, on the chief executive of the county. The Director of Regulation will send a copy of each such application to the Governor or other appropriate official of the State in which the facility is to be located or the activity is to be conducted, and will cause to be published in the FEDERAL REGISTER a notice of receipt of the application which states the purpose of the application and specifies the location at which the proposed activity would be conducted.

§ 2.102 Administrative review of application.

(a) During review of an application by the regulatory staff, an applicant may be required to supply additional information, and may be requested to confer informally.

(b) The Director of Regulation will refer the application to the ACRS as required by law and in such additional cases as he or the Commission may determine to be appropriate. The ACRS will render to the Commission one or more reports as required by law or as requested by the Commission.

(c) The Director of Regulation will make each report of the ACRS a part of the record of the application, and transmit copies to the appropriate State and local officials.

§ 2.103 Action on applications for byproduct, source, special nuclear material, and operator licenses.

(a) If the Director of Regulation finds that an application for a byproduct, source, special nuclear material or operator license complies with the requirements of the Act and this chapter, he will issue a license and inform the appropriate State and local officials.

(b) If the Director of Regulation finds that an application does not comply with the requirements of the Act and this chapter, he may issue a notice of

proposed denial or a notice of denial of the application and inform the applicant in writing of:

(1) The information, if any, which is deficient;

(2) Other reasons, if any, for the proposed denial or denial;

(3) If a notice of proposed denial, the time within which the applicant must supply the additional information; and

(4) If a notice of denial, the right of the applicant to request a hearing within thirty (30) days from the date of the denial.

HEARING ON APPLICATION—HOW INITIATED

§ 2.104 Notice of hearing.

(a) In the case of an application on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest, the Secretary will issue a notice of hearing to be published in the FEDERAL REGISTER as required by law at least thirty (30) days prior to the date set for hearing in the notice. The notice will state:

(1) The time, place, and nature of the hearing;

(2) The authority under which the hearing is to be held;

(3) The matters of fact and law to be considered; and

(4) The time within which answers to the notice shall be filed.

(b) The Secretary will give timely notice of the hearing to all parties and to other persons, if any, entitled by law to notice. The Director of Regulation will transmit a notice of hearing on an application for a facility license or for a license to receive waste radioactive material from other persons for the purpose of packaging, storage or disposal, to the Governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county.

§ 2.105 Notice of proposed action.

(a) If a hearing is not required by the Act or this Chapter, and if the Commission or the Director of Regulation has not found that a hearing is in the public interest, he will, prior to acting thereon, cause to be published in the FEDERAL REGISTER a notice of proposed action with respect to an application for:

(1) A license for a facility;

(2) A license to receive waste radioactive material from other persons for the purpose of packaging, storage, or disposal; or

(3) An amendment of a license specified in subparagraph (1) or (2) of this paragraph and which involves consideration of safety factors significantly different from those previously evaluated.

(b) The notice of proposed action will concisely state:

(1) The nature of the action proposed;

(2) The manner in which a copy of the safeguards analysis and of the ACRS report, if any, may be obtained or examined;

(3) A finding that the application does or does not comply with the requirements of the Act and this chapter; and

(4) The text of the proposed license.

(c) If an application for a construction permit is complete enough to permit all evaluations, other than completion inspection, necessary for the issuance of a construction permit and operating license, the notice of proposed issuance of a construction permit may provide that on completion of construction and inspection the operating license will be issued without further prior notice.

(d) The notice of proposed action will provide that, within not less than fifteen (15) days from the date of publication of the notice in the FEDERAL REGISTER:

(1) The applicant may file a request for hearing; and

(2) Any person whose interest may be affected by the proceeding may file a petition for leave to intervene.

(e) If no request for a hearing or petition for leave to intervene is filed within the time prescribed in the notice, the Director of Regulation will issue the license, inform the appropriate State and local officials, and cause to be published in the FEDERAL REGISTER a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Secretary will issue a notice of hearing or an appropriate order.

§ 2.106 Notice of issuance.

(a) The Director of Regulation will cause to be published in the FEDERAL REGISTER notice of the issuance of a license for which a notice of proposed action has been previously published.

(b) The Director of Regulation will cause to be published in the FEDERAL REGISTER, and inform the appropriate State and local officials of, the notice of issuance of an:

(1) Amendment of a license for a facility; or

(2) Amendment of a license to receive waste radioactive material from other persons for the purpose of packaging, storage or disposal, which does not involve consideration of factors significantly different from those previously evaluated.

(c) The notice of issuance will concisely state:

(1) The nature of the amendment;

(2) The manner in which copies of the safeguards analysis may be obtained and examined;

(3) A finding that the application for the amendment complies with the requirements of the Act and this chapter; and

(4) The text of the amendment.

(d) If a notice of proposed action has not been previously published, the notice of issuance will provide that, within not less than fifteen (15) days from the date of publication of the notice in the FEDERAL REGISTER:

(1) The applicant may file a request for a hearing;

(2) Any person whose interest may be affected by the proceeding may file a petition for leave to intervene.

(e) If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Commission will issue a notice of hearing or an appropriate order.

§ 2.107 Withdrawal of application.

(a) An applicant may withdraw an application at any time prior to the issuance of a notice of hearing.

(b) The withdrawal of an application does not authorize the removal of any document from the files of the Commission.

(c) The Director of Regulation will cause to be published in the FEDERAL REGISTER a notice of the withdrawal of an application if notice of receipt of the application has been previously published.

§ 2.108 Denial of application for failure to supply information.

(a) The Director of Regulation may deny an application if an applicant fails to respond to a request for additional information within thirty (30) days from the date of the request, or within such other time as may be specified.

(b) The Director of Regulation will cause to be published in the FEDERAL REGISTER a notice of denial when notice of receipt of the application has previously been published. The notice of denial will provide that, within thirty (30) days after the date of the denial, (1) the applicant may demand a hearing, and (2) any person whose interest may be affected by the proceeding may file a petition for leave to intervene.

§ 2.109 Effect of timely renewal application.

If a licensee files an application for a renewal or a new license at least thirty (30) days prior to the expiration of an existing license for any activity of a continuing nature, the existing license will not be deemed to have expired until the application has been finally determined.

Subpart B—Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License

§ 2.200 Scope of subpart.

This subpart prescribes the procedure in cases initiated by the regulatory staff to impose requirements by order on a licensee or to modify, suspend, or revoke a license, or for such other action as may be proper.

§ 2.201 Notice of violation.

(a) Before instituting any proceeding to modify, suspend, or revoke a license or to take other action for alleged violation of any provision of the Act or this chapter or the conditions of the license the Director of Regulation will serve on the licensee a written notice of violation, except as provided in paragraph (c) of this section. The notice of violation will concisely state the alleged violation and will require that the licensee submit, within twenty (20) days of the date of the notice or other specified time, a written reply including a statement as to:

(1) Whether the licensee admits or denies the violation;

(2) The reasons for the violation, if admitted;
(3) Corrective steps which have been taken by the licensee, and the results achieved;
(4) Corrective steps which will be taken; and
(5) The date when full compliance will be achieved.
(b) The notice will provide that, if an adequate reply is not received within the time specified in the notice, the Director of Regulation may issue an order to show cause why the license should not be modified, suspended, or revoked or such other action be taken as may be proper.
(c) When the Director of Regulation finds that the public health, safety, or interest so requires, or that the violation is willful, the notice of violation may be omitted and an order to show cause issued.

§ 2.202 Order to show cause.

(a) The Director of Regulation may institute a proceeding to modify, suspend, or revoke a license or for such other action as may be proper by serving on the licensee an order to show cause which will:
(1) Concisely allege the violations with which the licensee is charged;
(2) Provide that the licensee may file a written answer to the order under oath or affirmation within twenty (20) days of its date, or such other time as may be specified in the order;
(3) Inform the licensee of his right, within twenty (20) days of that date of the order, or such other time as may be specified in the order, to demand a hearing;
(4) Specify the issues; and
(5) State the effective date of the order.
(b) A licensee may respond to an order to show cause by filing a written answer under oath or affirmation. The answer shall specifically admit or deny each allegation or charge made in the order to show cause, and may set forth the matters of fact and law on which the licensee relies. The answer may demand a hearing.
(c) If the answer demands a hearing, the Commission will issue an order designating the time and place of hearing.
(d) An answer may consent to the entry of an order in substantially the form proposed in the order to show cause.
(e) The consent of the licensee to the entry of an order shall constitute a waiver by the licensee of a hearing, findings of fact and conclusions of law, and of all right to seek Commission and judicial review or to contest the validity of the order in any forum. The order shall have the same force and effect as an order made after hearing by a presiding officer or the Commission.
(f) When the Director of Regulation finds that the public health, safety, or interest so requires or that the violation is willful, the order to show cause may provide, for stated reasons, that the proposed action be temporarily effective pending further order.

§ 2.203 Settlement.

At any time after the issuance of an order designating the time and place of hearing in a proceeding to modify, suspend or revoke a license or for other action the regulatory staff and a licensee may enter into a stipulation for the settlement of the proceeding. The stipulation shall be subject to approval by the designated presiding officer or, if none has been designated, by the Chief Hearing Examiner, according due weight to the position of the regulatory staff. The presiding officer, or if none has been designated, the Chief Hearing Examiner, may order such adjudication of the issues as he may deem to be required in the public interest to dispose of the proceeding. If approved, the terms of the settlement shall be embodied in a decision and order settling and discontinuing the proceeding.

Subpart C—Procedure for Declaring Patents Affected With the Public Interest and for Licensing of Patents

§ 2.300 Scope of subpart.

This subpart prescribes the procedures for declaring a patent to be affected with the public interest pursuant to Section 153a of the Act, and for granting a license pursuant to Sections 153b(2) and 153e of the Act.

§ 2.301 Definition.

(a) "Patent owner" means the owner of a patent of record in the United States Patent Office.

PROCEDURE FOR DECLARING A PATENT AFFECTED WITH THE PUBLIC INTEREST

§ 2.302 Notice.

Prior to a declaration pursuant to Section 153a of the Act that a patent is affected with the public interest, the Commission will serve upon the patent owner a written notice of intent to declare the patent to be affected with the public interest.

§ 2.303 Request for hearing.

(a) On written request by the patent owner for a hearing, filed within 30 days after the service of the notice or such other time as the Commission may provide by the terms of the notice, the Secretary will issue a notice of hearing.
(b) Failure of the patent owner to request a hearing within the time specified in the notice may result in a declaration by the Commission that the patent is affected with the public interest. The Secretary will serve the declaration on the patent owner.

PROCEDURE FOR GRANTING A LICENSE PURSUANT TO SECTION 153b(2)

§ 2.304 Administrative examination of applications, notice to others, informal conferences.

An application for a license pursuant to Section 153b(2) of the Act, under a patent declared to be affected with the public interest shall be filed with the Secretary, and will be assigned a docket number. The Secretary will give notice of the filing of the application as required by law, and such additional notice as the Commission may direct. The applicant may be required to submit additional information, and may be requested to confer informally.

§ 2.305 Action on application.

(a) If the Commission proposes to deny an application it will serve on the applicant a notice of denial, which will afford an opportunity to file within the time specified a demand for a hearing.
(b) If the Commission proposes to approve the application and issue a license, it will serve on the applicant and the patent owner a notice of intent to issue a license, which will specify the scope of the proposed license and afford an opportunity to file within the time specified a demand for a hearing.

§ 2.306 Request for hearing.

If either the applicant or the patent owner demands a hearing within the time specified in the notice, the Secretary will issue a notice of hearing. Failure of the applicant to demand a hearing within the time specified may result in a denial of the request for a license, and failure of the patent owner to demand a hearing within the time specified may result in the issuance of a license.

PROCEDURE FOR GRANTING A LICENSE PURSUANT TO SECTION 153c OF THE ACT

§ 2.307 Administrative examination of an application, notice to others, informal conferences.

An application for a license pursuant to Section 153c of the Act for a patent useful in the production or utilization of special nuclear material or atomic energy shall be filed with the Secretary, and will be assigned a docket number. The Secretary will give notice of the filing of the application as required by law, and such additional notice as the Commission may direct. The applicant may be required to submit additional information and may be requested to confer informally regarding the application.

§ 2.308 Notice of application.

Within thirty (30) days after the filing of the application, the Secretary will serve a copy of the application on the patent owner.

§ 2.309 Notice of hearing.

Within thirty (30) days after the filing of the application, the Secretary will serve on the applicant and patent owner a notice of hearing to be held not later than sixty days after the filing of the application.

ROYALTIES

§ 2.310 Royalties.

If the Commission grants a patent license pursuant to Section 153b or 153e of the Act, the patent owner shall be entitled to a reasonable royalty fee from the licensee pursuant to Section 153 of the Act. The royalty fee may be agreed upon by the patent owner and the licensee or, in the absence of an agreement, will be determined by the Commission pursuant to Section 157 of the Act.

Subpart D—Rules of Procedure in Contract Appeals

§ 2.400 Scope of subpart.

This subpart prescribes the procedure for the disposition of appeals from decisions of contracting officers under the disputes articles of contracts with the Atomic Energy Commission and subcontracts under those contracts.

§ 2.401 Definitions.

As used in this subpart:

(a) "Contracting officer" means a representative of the Commission who is authorized by the terms of a contract or subcontract to decide a dispute in the first instance.

(b) "Contractor" includes a subcontractor, and "contract" includes a subcontract.

(c) "Party" includes (1) the contracting officer and the prime contractor, if the dispute arises or is alleged to arise under a prime contract; (2) the prime contractor and subcontractor, if the dispute arises or is alleged to arise under a subcontract; and (3) any other person permitted to intervene in the proceeding. The hearing examiner may, for good cause shown, permit or require the contracting officer to participate as a party to an appeal under a subcontract.

§ 2.402 Security.

All proceedings under this subpart shall be so conducted as to insure compliance with the security regulations and requirements of the Commission. The contracting officer, the hearing examiner, and the Commission will take appropriate steps to insure compliance with those regulations and requirements.

Preliminary Proceedings

§ 2.410 Initial determination.

When a dispute arising or alleged to arise under a contract cannot be settled by agreement, the contracting officer will expeditiously prepare and serve on the parties his specific written findings of fact, his decision, and a copy of this part.

§ 2.411 Appeal.

A contractor may appeal from a decision of the contracting officer by serving upon the contracting officer the original and three copies of a notice of appeal within the period provided in the contract or, if no such period is provided, within thirty days after service of the decision of the contracting officer upon the parties. A complaint may be served with the notice of appeal.

§ 2.412 Notice of appeal.

(a) The notice of appeal (1) shall be in writing, (2) shall indicate that an appeal is intended thereby, (3) shall identify by number the contract under which the dispute has arisen, or is alleged to arise, and the decision from which the appeal is taken, and (4) may request a hearing.

(b) A suggested form of notice of appeal is set forth in Appendix A to this subpart.

§ 2.413 Complaint.

(a) The contractor shall either (1) serve a complaint on the contracting officer with the notice of appeal, or (2) file the complaint with the Secretary within twenty (20) days thereafter. The hearing examiner assigned to the case, or the Chief Hearing Examiner in the absence of such assignment, may grant an extension of time on motion on reasonable notice to all parties. The complaint shall be served or filed, as the case may be, in an original and three copies.

(b) The complaint shall (1) identify the contract by number; (2) set forth the text of any articles of the contract pertaining to disputes; (3) identify any other articles of the contract alleged to be relevant to the dispute; (4) identify the decision from which the appeal is taken; and (5) specify the portion of the decision which the contractor alleges to be erroneous, with a brief statement of the grounds of the appeal. A suggested form of complaint is set forth in Appendix B to this subpart.

(c) Documentary material in support of the complaint may be attached to it and incorporated by reference. Such documentary material may be admitted in evidence on motion or on oral request at the hearing.

§ 2.414 Transmittal of notice of appeal.

(a) On service of a notice of appeal, the contracting officer shall forthwith endorse the date of receipt on the original and all copies and, within twenty days thereafter, shall file with the Secretary:

(1) The original and two (2) copies of the notice of appeal and the complaint, if served;

(2) Two (2) copies of the contract;

(3) Three (3) copies of his findings of fact and decision;

(4) Two (2) copies of any relevant information, correspondence and other documents; and

(5) Three (3) copies of a list of all documents transmitted.

(b) In complying with the requirement of service prescribed by § 2.712, the contracting officer shall serve on the contractor a copy of the contract and of any relevant information, correspondence, and other documents, only if the contractor demands them in writing within ten (10) days after service of the other documents specified in paragraph (a) of this section.

§ 2.415 Notification of parties by hearing examiner.

On receipt of the documents specified in § 2.414, the Secretary will transmit them to the Office of Hearing Examiners, which will assign a docket number to the appeal and transmit to all parties notice of the filing of the appeal.

§ 2.416 Answer.

(a) Within twenty (20) days after service of the complaint, the respondent shall file with the Secretary an original and three copies of an answer, unless an extension of time is granted.

(b) The answer shall admit or deny each material allegation of the complaint, and shall allege any matters of fact or law asserted to constitute a complete or partial defense. If the respondent has no knowledge or information sufficient to form a belief as to the truth of an allegation, the answer shall so state and the allegation will be deemed to be denied. Each affirmative defense shall be separately stated and numbered.

(c) Lack of jurisdiction of the hearing examiner to hear the appeal, or failure to state a claim on which relief can be granted, may be asserted in the answer or by motion.

(d) Documentary material in support of the answer may be attached to it and incorporated by reference. Such documentary material may be admitted in evidence on motion or on oral request at the hearing.

§ 2.417 Amendment of pleadings.

(a) The hearing examiner may at any time permit a party to amend his complaint or answer, or order that a party make a more definite statement of a complaint or answer, or reply to an answer. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the complaint and answer, the hearing examiner may allow the pleadings to be amended within the scope of the appeal when justice will be served.

(b) Any issue within the scope of the appeal but not raised by the complaint and answer, and tried by express or implied consent of the parties, shall be treated in all respects as if it had been raised in the complaint and answer.

§ 2.418 Dismissal of complaint.

The hearing examiner may at any time order that a complaint be dismissed for lack of jurisdiction or for failure to state a claim on which relief can be granted or, for good cause found, may order a dismissal with or without leave to file an amended complaint.

§ 2.419 Decision by hearing examiner without hearing.

If a hearing has not been demanded by any party and the hearing examiner does not order a hearing on his own motion, he may (a) decide the appeal on the record as it then exists; or (b) direct that proposed findings, conclusions, and supporting briefs be filed by each party and may then proceed to decide the appeal.

Hearing

§ 2.430 Notice of hearing.

(a) If a hearing has been demanded or has been ordered by the hearing examiner on his own motion, a notice of hearing will be issued specifying the time and place for the hearing. The notice of hearing will be served on the parties at least thirty (30) days prior to the date set for a hearing, unless all parties stipulate to a shorter time.

(b) Hearings will ordinarily be held at the Commission office administering the contract, but may be held at Commission Headquarters, Germantown, Maryland, or such other place as the hearing examiner may designate.

§ 2.431 Conduct of hearing.

(a) The hearing will be conducted as a trial *de novo* of the issues of fact and any relevant issues of law. The hearing examiner will consider the appeal on the record for decision.

(b) Except as the hearing examiner may otherwise order in the interests of justice, the party making a claim has the burden of proof.

§ 2.432 Record for decision.

The record for decision shall consist of:

(a) The findings of fact and decision of the contracting officer;

(b) The notice of appeal;

(c) Such portions of the contract, relevant information, correspondence and other documents filed by the contracting officer as may be incorporated by reference into the record;

(d) The pleadings;

(e) The transcript of hearing, if any, and exhibits received in evidence; and

(f) All other written motions, orders, briefs, and other documents ordered to be made a part of the record.

§ 2.433 Decision by the hearing examiner.

(a) When the record is closed, the hearing examiner will consider and decide the issues of fact raised by the appeal and all questions of law necessary for the adjudication of such issues of fact.

(b) The hearing examiner will make specific findings of fact and conclusions of law supported by the substantial evidence of record.

(c) The decision of the hearing examiner will constitute the final action of the Commission thirty (30) days after its date unless any party files a petition for review within twenty (20) days of its date or the Commission directs the record be certified to it for final decision.

COMMISSION REVIEW

§ 2.440 Commission review.

(a) A party may seek an appeal from a decision of a hearing examiner as provided in Subpart G.

(b) In determining whether it will grant the appeal, the Commission may take into consideration:

(1) The propriety of the award on its face, and the size of the award;

(2) Compliance by the contractor, contracting officer, and hearing examiner with the requirements of law and of the contract; and

(3) Substantial and important questions of law, policy, or discretion presented by the record.

APPENDIX A TO SUBPART D

Form of Notice of Appeal

UNITED STATES ATOMIC ENERGY COMMISSION

Appeal of

(Contractor or subcontractor)

Under Contract (Subcontract) No. ------

Docket No. CA-------

NOTICE OF APPEAL

Notice of appeal hereby is filed by

(Name of contractor or subcontractor) under its Contract (or Subcontract) No. ------ dated ---------- with ----------.

The decision(s) of the AEC Contracting Officer,

---,

(Name and location)

from which the appeal is taken, with the date(s) thereof is (are) as follows:

(here insert by numbered paragraphs the decision or decisions, in substantially the following form:

1. The decision of the Contracting Officer dated November 4, 1958, that radiator valves must be furnished and installed on invectors.

2. The decision of the Contracting Officer dated November 4, 1958, denying the Contractor's claim for an equitable adjustment in contract price.)

(Name of contractor or subcontractor)

By: ---

(Authorized officer of, or attorney for, appellant)

Address ---

Telephone No. ---

Dated ---

APPENDIX B TO SUBPART D

Form of Complaint

UNITED STATES ATOMIC ENERGY COMMISSION

Appeal of

(Name of contractor or subcontractor)

Under Contract (Subcontract) No. ------

Docket No. CA-------

COMPLAINT

The appellant states to the Commission as follows:

1. This appeal arises under Contract (or Subcontract) No. ------ dated ----------.

2. Said Contract (or Subcontract) contains a disputes article reading as follows:

3. Other articles of the Contract (or Subcontract) relevant to the dispute which is the subject of this appeal are as follows:

4. This appeal is taken from the decision(s) of the Contracting Officer,

---

(Name and title)

dated ----------.

5. The portion or portions of said decision(s) which appellant claims to be erroneous, with reasons therefor, is. (are) as follows:

6. The following document(s) is (are) submitted in support of the appeal:

NOTE: Here list, by exhibit number, a short description of the document(s) submitted, each copy of which should be marked, as follows:

Exhibit No. ------ to Complaint of

(Name of contractor or subcontractor)

Docket No. CA-------.

7. Appellant requests that an oral hearing on the appeal be held by the AEC Hearing Examiner (Note: This paragraph should be omitted where the right to hearing is waived).

Signed ---

(Authorized officer or representative of appellant)

Address ---

Telephone No. ---

Dated ---

Subpart G—Rules of General Applicability

§ 2.700 Scope of subpart.

The general rules in this subpart govern procedure in all adjudications initiated by the issuance of an order to show cause, a notice of hearing, or a notice of appeal.

§ 2.701 Filing of documents.

(a) Documents shall be filed with the Commission in adjudications subject to this part either (1) by delivery to the Public Document Room at 1717 H Street NW., Washington, D.C., or Office of the Secretary at Commission Headquarters, Germantown, Maryland; or (2) by mail or telegram addressed to the Secretary, United States Atomic Energy Commission, Washington 25, D.C.

(b) All documents offered for filing shall be accompanied by proof of service as required by law or by rule or order of the Commission.

(c) Filing by mail or telegram will be deemed to be complete as of the time of deposit in the mail or with a telegraph company.

§ 2.702 Docket.

The Secretary will maintain a docket of each proceeding subject to this part, commencing with the issuance of the initial notice of hearing or order to show cause or, in the case of a contract appeal, receipt of the notice of appeal. The Secretary will maintain all files and records, including the transcripts of testimony and exhibits and all papers, correspondence, decisions and orders filed or issued.

§ 2.703 Notice of hearing.

(a) In a proceeding in which the terms of a notice of hearing are not otherwise prescribed by this part, the order or notice of hearing will state:

(1) The nature of the hearing, and its time and place, or a statement that the time and place will be fixed by subsequent order;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law asserted or to be considered; and

(4) The time within which an answer shall be filed.

(b) The time and place of hearing will be fixed with due regard for the convenience of the parties or their representatives, the nature of the proceeding, and the public interest.

§ 2.704 Designation of presiding officer, disqualification, unavailability.

(a) The Commission may provide in the notice of hearing that one or more members of the Commission, or a named officer to whom has been delegated final authority in the matter, shall preside. If the Commission does not so provide, the Chief Hearing Examiner will issue an order designating a hearing examiner appointed pursuant to Section 11 of the Administrative Procedure Act to preside.

(b) If a designated presiding officer deems himself disqualified to preside, he shall withdraw by notice on the record and shall notify the Commission of his withdrawal.

(c) If a party deems the presiding officer to be disqualified, he may move that the presiding officer disqualify himself. The motion shall be supported by affidavits setting forth the alleged grounds for disqualification. If the presiding officer does not grant the motion he will refer it to the Commission, which

will determine the sufficiency of the grounds alleged.

(d) If a presiding officer becomes unavailable during the course of a hearing, the Commission will designate another presiding officer. If he becomes unavailable after the hearing has been concluded, the Commission may:

(1) Designate another presiding officer to make the decision;

(2) Direct that the record be certified to it for decision; or

(3) Designate another presiding officer.

(e) In the event of substitution of a presiding officer for the one originally designated, any motion predicated upon the substitution shall be made within five (5) days thereafter.

§ 2.705 Answer.

(a) Within twenty (20) days after service of the notice of hearing, or such other time as may be specified in the notice of hearing, a party may file an answer which shall concisely state (1) the nature of his defense or other position; (2) the items of the specification of issues he controverts and those he does not controvert, and (3) whether he proposes to appear and present evidence.

(b) If facts are alleged in the specification of issues, the answer shall admit or deny specifically each material allegation of fact; or, where the party has no knowledge or information sufficient to form a belief, the answer may so state and the statement shall have the effect of a denial. Material allegations of fact not denied shall be deemed to be admitted. Matters alleged as affirmative defenses or positions shall be separately stated and identified and, in the absence of a reply, shall be deemed to be controverted.

(c) If a party does not oppose an order or proposed action embodied in or accompanying the notice of hearing, or does not wish to appear and present evidence at the hearing, the answer shall so state. In lieu of appearing at the hearing, a party may request leave to file a statement under oath or affirmation of reasons why the proposed order or action should not be issued or should differ from that proposed. Such a statement, if accepted, will be accorded whatever weight is deemed proper.

§ 2.706 Reply.

A party may file a reply to an answer within five (5) days after it is served.

§ 2.707 Default.

On failure of a party to file an answer within the time prescribed in this part or as specified in a notice of hearing or pleading, or to appear at a hearing or prehearing conference, the Commission may:

(a) Find the facts as alleged and enter such findings or order as may be appropriate without further notice; or

(b) Proceed without further notice to take proof on the issues specified.

§ 2.708 Formal requirements for documents.

(a) Each document filed in an adjudication subject to this part to which a docket number has been assigned shall bear the docket number and title of the proceeding.

(b) Each document shall be bound on the left side and typewritten, printed or otherwise reproduced in permanent form on good unglazed paper of standard letterhead size. Each page shall begin not less than one and one-quarter inches from the top, with side and bottom margins of not less than one and one-quarter inches. Text shall be double-spaced, except that quotations may be single-spaced and indented. The requirements of this paragraph do not apply to original documents or admissible copies offered as exhibits, or to specially prepared exhibits.

(c) The original of each document shall be signed in ink by an attorney of record for the party or, in the case of a party not represented by counsel, by the party or his authorized representative. The capacity of the person signing, his address, and the date shall be stated. The signature of a person signing in a representative capacity is a representation that the document has been subscribed in the capacity specified with full authority, that he has read it and knows the contents, that to the best of his knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay. If a document is not signed, or is signed with intent to defeat the purpose of this section, it may be stricken.

(d) Except as otherwise provided by this part or by order, a pleading or other document other than correspondence shall be filed in an original and fifteen conformed copies.

(e) The first document filed by any person in a proceeding shall designate the name and address of a person on whom service may be made.

§ 2.709 Acceptance for filing.

A document which fails to conform to the requirements of § 2.708 may be refused acceptance for filing and may be returned with an indication of the reason for nonacceptance. Any matter so tendered but not accepted for filing shall not be entered on the Commission's docket.

§ 2.710 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, of legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. When the period of time is less than seven (7) days, intermediate Saturdays, Sundays, and holidays are excluded. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

§ 2.711 Extension of time.

Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may for good cause be extended or shortened by the Commission or the presiding officer.

§ 2.712 Service of papers, methods, proof.

(a) *Who may make service.* Except for subpoenas, service of which is governed by § 2.720, the Commission will serve all orders, decisions, notices, and other papers issued by it upon all parties.

(b) *Who may be served.* Any paper required to be served upon a party shall be served upon him or upon the representative designated by him or by law to receive service of papers. When a party has appeared by attorney, service may be made upon the attorney of record.

(c) *How service may be made.* Service may be made by personal delivery, by first class, certified or registered mail including air mail, by telegraph, or as otherwise authorized by law. Where there are numerous parties to a proceeding, the Commission may make special provision regarding the service of papers.

(d) *When service complete.* Service upon a party is complete:

(1) By personal delivery, on handing the paper to the individual, or leaving it at his office with his clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place therein or, if the office is closed or the person to be served has no office, leaving it at his usual place of residence with some person of suitable age and discretion then residing there;

(2) By telegraph, when deposited with a telegraph company, properly addressed and with charges prepaid;

(3) By mail, on deposit in the United States mail, properly stamped and addressed; or

(4) When service cannot be effected in a manner provided by subparagraphs (1) to (3) inclusive of this paragraph, in any other manner authorized by law.

(e) *Proof of service.* Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, and may be made by:

(1) Written acknowledgment of the party served or his counsel;

(2) The certificate of counsel if he has made the service; or

(3) The affidavit of the person making the service.

§ 2.713 Appearance and practice before the Commission in Adjudicatory Proceedings.

(a) *Representation.* A person may appear in an adjudication on his own behalf or by an attorney-at-law in good standing admitted to practice before any court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States. An attorney appearing in a representative capacity shall file with

the Commission a written notice of appearance which shall state his name, address, and telephone number; the basis of his eligibility; and the name and address of the person on whose behalf he appears.

(b) *Standards of conduct.* An attorney shall conform to the standards of conduct required in the courts of the United States.

(c) *Suspension of attorneys.* A presiding officer may, by order for good cause stated on the record, suspend or bar from participation in a proceeding any attorney who engages in dilatory tactics or disorderly or contemptuous conduct in the course of a proceeding. An appeal from such an order by a presiding officer may be taken to the Commission.

§ 2.714 Intervention.

(a) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition under oath or affirmation for leave to intervene not later than five (5) days before the commencement of the hearing or within such other time as may be specified in the notice, or as permitted by the presiding officer. The petition shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner. A petition for leave to intervene which is not timely filed will be dismissed unless the petitioner shows good cause for failure to file it on time.

(b) Any party to a proceeding may file an answer to a petition to intervene within five (5) days after the petition is filed.

(c) The Commission or, in the event a presiding officer has been designated, the presiding officer will rule on the petition.

(d) An order permitting intervention may be conditioned on such terms as the Commission or presiding officer may direct. A person permitted to intervene becomes a party to the proceeding. The granting of a petition to intervene does not change or enlarge the issues specified in a notice of hearing unless otherwise expressly provided in the order allowing intervention.

§ 2.715 Participation by a person not a party.

(a) A person who is not a party may, in the discretion of the presiding officer, be permitted to make a limited appearance by making oral or written statement of his position on the issues within such limits and on such conditions as may be fixed by the presiding officer, but he may not otherwise participate in the proceeding.

(b) The Commission will give notice of a hearing to any person who requests it. When a communication bears more than one signature, the Commission will give the notice to the person first signing unless the communication clearly indicates otherwise.

(c) The presiding officer will afford a representative of an interested State which is not a party a reasonable opportunity to participate and to introduce evidence, interrogate witnesses, and advise the Commission without requiring the representative to take a position with respect to the issues.

§ 2.716 Consolidation.

On motion and for good cause shown or on its own initiative, the Commission may consolidate for hearing or for other purposes two or more proceedings if it finds that such action will be conducive to the proper dispatch of its business and to the ends of justice .

§ 2.717 Commencement and termination of jurisdiction of presiding officer.

(a) Unless otherwise ordered by the Commission, the presiding officer designated to conduct a hearing has jurisdiction over the proceeding, including motions and procedural matters, from the time when the proceeding commences until the initial decision is rendered. If no presiding officer has been designated, the Chief Hearing Examiner has such jurisdiction or, if he is unavailable, another hearing examiner has such jurisdiction. A proceeding is deemed to commence when a notice of hearing is issued or, in the case of a contract appeal subject to Subpart D, when a notice of appeal is filed. When a notice of hearing provides that the presiding officer is to be a hearing examiner, the Chief Hearing Examiner will designate by order the hearing examiner who is to preside.

(b) Administrative actions affecting persons or matters involved in a proceeding before a presiding officer may be taken by Commission officers authorized to act, subject to such modification as may be determined by the presiding officer to be appropriate to the purposes of the pending proceeding.

§ 2.718 Power of presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order. He has all powers necessary to those ends, including the powers to:

(a) Administer oaths and affirmations.

(b) Issue subpoenas authorized by law.

(c) Rule on offers of proof, and receive evidence.

(d) Order depositions to be taken.

(e) Regulate the course of the hearing and the conduct of the participants.

(f) Dispose of procedural requests or similar matters.

(g) Examine witnesses.

(h) Hold conferences before or during the hearing for settlement, simplification of the issues, or any other proper purpose.

(i) Certify questions to the Commission for its determination, either in his discretion or on direction of the Commission.

(j) Reopen a proceeding for the reception of further evidence at any time prior to initial decision.

(k) Issue initial decisions; and

(l) Take any other action consistent with the Act, this chapter, and the Administrative Procedure Act of 1946.

§ 2.719 Separation of functions.

(a) presiding officer shall perform no duties inconsistent with his responsibilities as a presiding officer, and will not be responsible to or subject to the supervision or direction of any officer or employee engaged in the performance of investigative or prosecuting functions.

(b) In any adjudication, the presiding officer may not consult any person other than a member of his staff on any fact in issue unless on notice and opportunity for all parties to participate, except as required for the disposition of ex parte matters as authorized by law.

(c) In any case of adjudication, no officer or employee of the Commission who has engaged in the performance of any investigative or prosecuting function in the case or a factually related case may participate or advise in the initial or final decision, except as a witness or counsel in the proceeding.

§ 2.720 Subpoenas.

(a) On application by any party, the designated presiding officer or, if he is not available, the Chief Hearing Examiner or other designated officer will issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence. The officer to whom application is made may require a showing of general relevance of the testimony or evidence sought, and may withhold the subpoena if such a showing is not made; but he shall not attempt to determine the admissibility of evidence.

(b) Every subpoena will bear the name of the Commission, the name and office of the issuing officer and the title of the hearing, and will command the person to whom it is directed to attend and give testimony or produce specified documents or other things at a designated time and place. The subpoena will also advise of the quashing procedure provided in paragraph (f) of this section.

(c) Unless the service of a subpoena is acknowledged on its face by the witness or is served by an officer or employee of the Commission, it shall be served by a person who is not a party to the hearing and is not less than eighteen (18) years of age. Service of a subpoena shall be made by delivery of a copy of the subpoena to the person named in it and tendering him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Commission, fees and mileage need not be tendered, and the subpoena may be served by registered mail.

(d) Witnesses summoned by subpoena shall be paid, by the party at whose instance they appear, the fees and mileage paid to witnesses in the district courts of the United States.

(e) The person serving the subpoena shall make proof of service by filing the subpoena and affidavit or acknowledgment of service with the officer before whom the witness is required to testify or produce evidence or with the Secretary. Failure to make proof of service shall not affect the validity of the service.

(f) On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the

person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the presiding officer or, if he is unavailable, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms.

(g) On application and for good cause shown, the Commission will seek judicial enforcement of a subpoena issued to a party and which has not been quashed.

MOTIONS

§ 2.730 Motions.

(a) *Presentation and disposition.* All motions shall be addressed to the Commission. All written motions shall be filed with the Secretary and served on all parties to the proceeding. During the time when a proceeding is before the Commission, a motion for an extension of time which would ordinarily be granted as of course, and to which all parties consent, may be acted upon by the Chief Hearing Examiner.

(b) *Form and content.* Unless made orally on the record during a hearing, or the presiding officer directs otherwise, a motion shall be in writing, shall state with particularity the grounds and the relief sought, and shall be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form of order.

(c) *Answers to motions.* Within five (5) days after service of a written motion, or such other period as the Commission or presiding officer may prescribe, a party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. If no answer is filed, the parties shall be deemed to have consented to the granting of the motion. The moving party shall have no right to reply, except as permitted by the presiding officer or the Commission.

(d) *Oral arguments; briefs.* No oral argument will be heard on a motion unless the presiding officer or the Commission directs otherwise. A written brief may be filed with a motion or an answer to a motion, stating the arguments and authorities relied on.

(e) *Disposition of motion.* A written motion will be disposed of by written order and on notice to all parties.

(f) *Interlocutory appeals to the Commission.* No interlocutory appeal may be taken to the Commission from a ruling of the presiding officer. When in the judgment of the presiding officer prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, the presiding officer may refer the ruling promptly to the Commission, and notify the parties either by announcement on the record or by written notice if the hearing is not in session.

(g) *Effect of filing a motion or allowance of an interlocutory appeal.* Unless otherwise ordered, neither the filing of a motion nor the allowance of an interlocutory appeal shall stay the proceeding or extend the time for the performance of any act.

§ 2.731 Order of procedure.

The presiding officer or the Commission will designate the order of procedure at a hearing. The proponent of an order will ordinarily open and close.

§ 2.732 Burden of proof.

Unless otherwise ordered by the presiding officer, the applicant or the proponent of an order has the burden of proof.

§ 2.733 Examination by experts.

At the request of a party, a presiding officer may permit a qualified individual who has scientific or technical training or experience to participate on behalf of that party in the examination and cross-examination of expert witnesses.

DEPOSITIONS AND WRITTEN INTERROGATORIES; DISCOVERY; ADMISSION; EVIDENCE

§ 2.740 Depositions and Written Interrogatories.

(a) On motion and for good cause shown, the Commission may order that the testimony of any party or other person be taken by deposition on oral examination or written interrogatories. The attendance of witnesses may be compelled by subpoena.

(b) The motion shall give reasonable notice of the proposed time and place of taking the deposition; the name and address of each person to be examined, if known, or, if the name is not known, a general description sufficient to identify him or the class or group to which he belongs; and the reasons why the deposition should be taken. If good cause is shown, an order will be issued authorizing the deposition and imposing any proper limitations for the benefit of witnesses or parties. The order shall be served on all parties by the person proposing to take the deposition a reasonable time in advance of the time fixed for taking testimony.

(c) Within the United States, a deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Outside of the United States, a deposition may be taken before a secretary of an embassy or legation, a consul general, vice consul or consular agent of the United States, or a person authorized to administer oaths designated by the Commission.

(d) Unless the order provides otherwise, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the hearing. He shall be sworn or shall affirm before any questions are put to him. Examination and cross-examination shall proceed as at a hearing. Except as the parties otherwise agree, the deposition upon written interrogatories shall be taken with only parties and counsel, the deponent, the officer, and the reporter or stenographer present during the interrogation, and the officer shall certify to that fact. Each question propounded shall be recorded and the answer taken down in the words of the witness. Objections on questions of evidence shall be noted in short form without the arguments. The officer shall not decide on the competency, materially, or relevancy of evidence but shall record the evidence subject to objection. Objections to questions of evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(e) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature unless he is ill or cannot be found or refuses to sign. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign, and shall promptly forward the deposition by registered mail to the Commission.

(f) Where the deposition is to be taken on written interrogatories, the party proposing the deposition shall file a copy of the proposed interrogatories showing each interrogatory separately and consecutively numbered, the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be taken. Within seven (7) days after filing, any other party may serve cross-interrogatories. Objections to interrogatories or cross-interrogatories shall be made promptly and will be ruled upon by the presiding officer. Objections to form, unless made before the order for taking the deposition is issued, shall be deemed waived. The interrogatories, cross-interrogatories, and answers shall be recorded and signed, and the deposition certified, returned, and filed as in the case of a deposition on oral examination.

(g) A deposition will not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts. A party shall not be deemed to make a person his own witness for any purpose by taking his deposition.

(h) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party at whose instance the deposition is taken.

(i) The witness may be accompanied, represented, and advised by legal counsel.

§ 2.741 Discovery and production of documents and things for inspection, copying, or photographing.

(a) *Order to produce.* On motion of any party showing good cause and on notice to all other parties, the Commission may:

(1) Order any party to produce and permit the inspection and copying or photographing, by and on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things in his or its possession, custody, or control, which are not determined to be privileged, and which constitute or contain evidence (including the existence, description, nature, custody, condition and location of any books, documents,

or other tangible things and the identity and location of persons having knowledge of relevant facts) regarding any matter that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any party; or

(2) Order any party to permit entry upon designated land or other property in his or its possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation which is relevant within subparagraph (1) of this paragraph.

(b) *Relation to admissible evidence.* It is not ground for objection to the motion that the evidence will be inadmissible if the evidence sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Scope of order.* The order shall specify the time, place, and manner of making the inspection and taking the copies and photographing, and may prescribe such terms and conditions as are just. The Commission may make an order that the inspection, copying, measuring, surveying, or photographing shall be limited to certain matters or that secret processes, developments, or research need not be disclosed and any other order which justice requires to protect the party from annoyance, embarrassment, or oppression.

§ 2.742 Admissions.

(a) At any time after his answer has been filed, a party may file a written request for the admission of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact. A copy of the document shall be delivered with the request unless a copy has already been furnished.

(b) Each requested admission shall be deemed made unless, within a time designated by the presiding officer or the Commission, and not less than ten (10) days after service of the request or such further time as may be allowed on motion, the party to whom the request is directed serves on the requesting party either (1) a sworn statement denying specifically the relevant matters of which an admission is requested or setting forth in detail the reasons why he can neither truthfully admit nor deny them, or (2) written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part. Answers on matters to which such objections are made may be deferred until the objections are determined. If written objections are made to only a part of a request, the remainder of the request shall be answered within the time designated.

(c) Admissions obtained pursuant to the procedure in this section may be used in evidence to the same extent and subject to the same objections as other admissions.

§ 2.743 Evidence.

(a) *General.* Every party to a proceeding shall have the right to present such oral or documentary evidence and rebuttal evidence and conduct such cross-examination as may be required for full and true disclosure of the facts.

(b) *Written testimony.* Where the interest of any party will not be prejudiced, it is expected that each party will submit all or part of the direct testimony of his witnesses in written form, unless objections are presented and as otherwise ordered by the presiding officer. Unless otherwise ordered by the presiding officer, a party may: Serve copies of proposed written testimony on all parties at least five (5) days in advance of the session of the hearing at which such testimony is to be presented, unless all parties agree that all or any part of such five (5) days' prior service be waived; the presiding officer may permit the introduction of written testimony after having given all parties present a reasonable opportunity to examine it. Whenever it is deemed necessary or desirable, the Commission or the presiding officer may direct that proposed testimony be reduced to written form and be served and offered in the manner described in this paragraph, allowing a reasonable time for the preparation of the written testimony.

(c) *Admissibility.* Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

(d) *Objections.* An objection to evidence shall briefly state the grounds of objection. The transcript shall include the objection, the grounds, and the ruling. Exception to an adverse ruling is preserved without notation on the record.

(e) *Offer of proof.* An offer of proof made in connection with an objection to a ruling of the presiding officer excluding or rejecting proffered oral testimony shall consist of a statement of the substance of the proffered evidence. If the excluded evidence is written, a copy shall be marked for identification. Rejected exhibits, adequately marked for identification, shall be retained in the record.

(f) *Exhibits.* A written exhibit will not be received in evidence unless the original and two copies are offered and a copy furnished to each party, or the parties have previously been furnished with copies or the presiding officer directs otherwise. The presiding officer may permit a party to replace with a true copy an original document admitted in evidence.

(g) *Record of the application.* In any proceeding involving an application, there shall be offered in evidence the record of the application, including the application, amendments, correspondence related to the application, reports if any of the ACRS, and any other documents except as limited by section 181 of the Act or order of the Commission.

(h) *Official record.* An official record of a government agency or entry in an official record may be evidenced by an official publication or by a copy attested by the officer having legal custody of the record and accompanied by a certificate of his custody.

(i) *Official notice.* Official notice may be taken of any fact of which judicial notice might be taken by the courts of the United States and of any technical or scientific fact within the knowledge of the Commission as an expert body, if (1) the fact is specified in the record or is brought to the attention of the parties before final decision, and (2) every party adversely affected by the decision is afforded an opportunity to controvert the fact. Any party may oppose a request that official notice be taken of a fact. If a decision is stated to rest in whole or in part on official notice of a fact which the parties have not had a prior opportunity to controvert, a party may controvert the fact by filing a petition for review of an initial decision or a petition for reconsideration of a final decision, clearly and concisely setting forth the information relied on to show the contrary.

HEARINGS

§ 2.750 Official reporter; transcript.

(a) A hearing will be reported under the supervision of the presiding officer, stenographically or by other means, by an official reporter who may be designated from time to time by the Commission or may be a regular employee of the Commission. The transcript prepared by the reporter shall be the sole official transcript of the proceeding. Except as limited pursuant to Section 181 of the Act or order of the Commission, the transcript will be open for inspection at the Public Document Room. Copies of transcripts are available to parties and to the public from the official reporter on payment of the charges fixed therefor.

(b) Transcript corrections: Corrections of the official transcript may be made only in the manner provided by this paragraph. Corrections ordered or approved by the presiding officer shall be included in the record as an appendix, and when so incorporated the Secretary shall make the necessary physical corrections in the official transcript so that it will incorporate the changes ordered. In making corrections there shall be no substitution of pages but, to the extent practicable, corrections shall be made by running a line through the matter to be changed without obliteration and writing the matter as changed immediately above. Where the correction consists of an insertion, it shall be added by rider or interlineation as near as possible to the text which is intended to precede and follow it.

§ 2.751 Hearings to be public.

Except as may be requested pursuant to Section 181 of the Act, all hearings will be public unless otherwise ordered by the Commission.

§ 2.752 Prehearing conference.

(a) The Commission or the presiding officer may direct the parties or their counsel to appear at a specified time and place for a conference to consider:

(1) Simplification and clarification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining stipulations and admissions of fact and of the contents and authenticity of docu-

ments which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence, including the preparation of written testimony; and

(5) Such other matters as may aid in the orderly disposition of the proceeding.

(b) Prehearing conferences may be stenographically reported.

(c) The Commission or the presiding officer may enter an order which recites the action taken at the conference, the amendments allowed to the pleadings, and agreements by the parties, and which limits the issues. The order shall control the subsequent course of the proceeding unless modified for good cause.

§ 2.753 Stipulations.

The parties may stipulate in writing or orally on the record during a hearing as to matters of fact or procedure. Such a stipulation may be received in evidence.

§ 2.754 Proposed findings and conclusions.

(a) Within twenty (20) days after the record is closed, or within such reasonable additional time as may be allowed by the presiding officer, any party to the proceeding may, or if so directed by the presiding officer, shall file proposed findings of fact and conclusions of law, briefs and a proposed form of order or decision. Failure to file proposed findings of fact, conclusions of law or briefs when directed to do so may be deemed a default, and an order or initial decision may be entered accordingly.

(b) Except as otherwise ordered by the presiding officer:

(1) The party who has the burden of proof shall initially file proposed findings of fact and conclusions of law and briefs, and a proposed form of order or decision;

(2) Other parties may file proposed findings, conclusions of law and briefs within twenty (20) days thereafter;

(3) A party who has the burden of proof may reply within ten (10) days after service of proposed findings and conclusions of law and briefs by other parties.

(c) Proposed findings of fact shall be clearly and concisely set forth in numbered paragraphs and shall be confined to the material issues of fact presented on the record, with exact citations to the transcript of record and exhibits in support of each proposed finding. Proposed conclusions of law shall be set forth in numbered paragraphs as to all material issues of law or discretion presented on the record. Proposed findings of fact and conclusions of law submitted by a person who does not have the burden of proof and who has only a limited interest in the proceeding may be confined to matters which affect his interests.

§ 2.755 Oral argument before presiding officer.

When, in the opinion of the presiding officer, time permits and the nature of the proceeding and the public interest warrant, he may allow and fix a time for the presentation of oral argument. He will impose appropriate limits of time on the argument. The transcript of the argument shall be a part of the record.

INITIAL DECISION AND COMMISSION REVIEW

§ 2.760 Initial decision and its effect.

(a) After hearing, the presiding officer will render an initial decision which will constitute the final action of the Commission thirty (30) days after its date unless a party files a petition for review within twenty (20) days of its date or the Commission directs that the record be certified to it for final decision.

(b) Where the public interest so requires, the Commission may direct that the presiding officer certify the record to it without an initial decision, and may:

(1) Prepare its own initial decision, which will become final unless exceptions are filed; or

(2) Omit an initial decision on a finding that due and timely execution of its functions imperatively and unavoidably so requires.

(c) An initial decision will be in writing and will be based on the whole record and supported by reliable, probative, and substantial evidence. The initial decision will include:

(1) Findings, conclusions and rulings, with the reasons or basis for them, on all material issues of fact, law, or discretion presented on the record;

(2) All facts officially noticed and relied on in making the decision;

(3) The appropriate ruling, order or denial of relief with the effective date, and the time within which a petition for review may be filed;

(4) In the case of an initial decision which may become final in accordance with paragraph (a) of this section, the date when it may become final.

§ 2.761 Expedited decisional procedure.

(a) The presiding officer may determine a proceeding by an order after the conclusion of a hearing without issuing an initial decision, when:

(1) All parties stipulate that the initial decision may be omitted and waive their rights to file a petition for review, to request oral argument, and to seek judicial review;

(2) No unresolved substantial issue of fact, law, or discretion remains, and the record clearly warrants granting the relief requested; and

(3) The presiding officer finds that dispensing with the issuance of the initial decision is in the public interest.

(b) An order entered pursuant to paragraph (a) of this section shall be subject to review by the Commission on its own motion within thirty (30) days after its date.

(c) An initial decision may be made effective immediately, subject to review by the Commission on its own motion within thirty (30) days after its date, when:

(1) All parties stipulate that the initial decision may be made effective immediately and waive their rights to file a petition for review, to request oral argument, and to seek judicial review;

(2) No unresolved substantial issue of fact, law, or discretion remains and the record clearly warrants granting the relief requested; and

(3) The presiding officer finds that it is in the public interest to make the initial decision effective immediately.

§ 2.762 Petition for review.

(a) *Who may file.* A party may within twenty (20) days after the date of an initial decision file a petition for review of the initial decision by the Commission, and a brief in support of the petition.

(b) *Content.* The petition for review shall plainly and concisely state the facts, and the brief shall plainly and concisely state the legal grounds, on which the petitioner bases his claim that he has been aggrieved by the decision of the presiding officer, or that review is required in the public interest, and the relief which the petitioner seeks by review. Ten (10) copies of the petition and brief shall be filed.

(c) *Answer.* Within ten (10) days after the filing of the petition and brief a respondent may file ten (10) copies of an opposing brief.

(d) *Granting of petition.* The petition for review may be granted in the discretion of the Commission, giving due weight to the existence of a substantial question with respect to such considerations as the following:

(1) A finding of a material fact is clearly erroneous;

(2) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;

(3) A substantial and important question of law, policy or discretion has been raised;

(4) The conduct of the proceeding involved a prejudicial procedural error; or

(5) Any other consideration which the Commission may deem to be in the public interest.

(e) *Effect of denial.* If the Commission denies the petition, the decision of the presiding officer will thereupon become the final action of the Commission.

(f) *Effect of granting petition.* If the Commission grants the petition, the petitioner shall file exceptions and a brief in support of them within twenty (20) days after service of the order granting the petition. Each party may file an opposing brief within ten (10) days after the service of the exceptions and brief. Ten (10) copies of the exceptions and brief and of each opposing brief shall be filed.

(g) *Exceptions.* Each exception shall relate only to an important procedural or substantive matter presented by the record as limited by the Commission's order granting review; shall be separately numbered; shall identify the part of the decision to which objection is made; and shall specify precisely the portions of the record relied upon. The brief shall state the grounds of the exception, including citation of authori-

ties. Any objection to a ruling, finding, or conclusion which is not made a part of the exceptions will be deemed to be waived.

(h) *Reason for denying relief.*. The failure of a petitioner to present clearly, concisely, and accurately whatever is essential to a ready and adequate understanding of his exceptions and arguments will be sufficient reason for denying relief.

§ 2.763 Oral argument.

Oral argument will not be allowed on a petition for review. The Commission may allow oral argument of an appeal after granting a petition for review.

FINAL DECISION

§ 2.770 Final decision.

(a) The Commission will ordinarily consider the whole record on review, but may limit the issues to be reviewed and consider only findings and conclusions to which exceptions have been filed.

(b) The Commission may adopt, modify, or set aside the findings, conclusions and order in the initial decision, and will state the basis of its action. The final decision will be in writing and will include:

(1) A statement of findings and conclusions, with the basis for them on all material issues of fact, law or discretion presented;

(2) All facts officially noticed;

(3) The ruling on each material exception;

(4) The appropriate ruling, order, or denial of relief, with the effective date.

§ 2.771 Petition for reconsideration.

(a) A petition for reconsideration of a final decision may be filed by a party within ten (10) days after the date of the decision. No petition may be filed with respect to an initial decision which has become final through failure to file a petition for review.

(b) The petition for reconsideration shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the petition, and the relief sought. Within seven (7) days after a petition for reconsideration has been filed, any other party may file an answer in opposition to or in support of the petition.

(c) Neither the filing nor the granting of the petition shall stay the decision unless the Commission orders otherwise.

EX PARTE COMMUNICATIONS

§ 2.780 Ex parte communications.

(a) Neither (1) Commissioners, members of their immediate staffs, or other AEC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions will request or entertain off the record except from each other, nor (2) any applicant for or holder of an AEC license or permit, or any officer, employee, representative, or other person directly or indirectly acting in behalf thereof, shall submit off the record to Commissioners or such staff members, officials, and employees, any evidence, explanation, analysis, or advice, whether written or oral, regarding any substantive matter at issue in a proceeding on the record then pending before the AEC for the issuance, denial, amendment, transfer, renewal, modification, suspension, or revocation of a license or permit. For the purposes of this section, the term "proceeding on the record then pending before the AEC" shall include any application or matter which has been noticed for hearing or concerning which a hearing has been requested pursuant to this part.

(b) Copies of written communications covered by paragraph (a) of this section shall be placed in the AEC public document room and served by the Secretary on the communicator and the parties to the proceeding involved.

(c) A Commissioner, member of his immediate staff, or other AEC official or employee advising the Commissioners in the exercise of their quasi-judicial functions, to whom is attempted any oral communication concerning any substantive matter at issue in a proceeding on the record as described in paragraph (a) of this section, will decline to listen to such communication and will explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof will advise the communicator that a written summary of the conversation will be delivered to the AEC public document room and a copy served by the Secretary of the Commission on the communicator and the parties to the proceeding involved. The recipient of the oral communication thereupon will make a fair, written summary of such communication and deliver such summary to the AEC public document room and serve copies thereof upon the communicator and the parties to the proceeding involved.

(d) This section does not apply to the disposition of ex parte matters authorized by law, or to communications requested by the Commission concerning:

(1) Its proprietary functions.

(2) General health and safety problems and responsibilities of the Commission; or

(3) The status of proceedings.

Subpart H—Rule Making

§ 2.800 Scope of rule making.

This subpart governs the issuance, amendment and repeal of regulations in which participation by interested persons is prescribed under section 4 of the Administrative Procedure Act.

§ 2.801 Initiation of rule making.

Rule making may be initiated by the Commission at its own instance, on the recommendation of another agency of the United States, or on the petition of any other interested person.

§ 2.802 Petition for rule making.

Any interested person may petition the Commission to issue, amend, or rescind any regulation. The petition shall state the substance or text of any proposed regulation or amendment, or shall specify the regulation the rescission or amendment of which is desired, and shall state the basis for the request. The Secretary will assign a docket number to the petition, deposit a copy in the Public Document Room, and cause notice of the filing of the petition to be published in the FEDERAL REGISTER. Publication will be limited by the requirements of section 181 of the Act and may be limited by order of the Commission.

§ 2.803 Determination of petition.

No hearing will be held on the petition unless the Commission deems it advisable. If the Commission determines that sufficient reason exists, it will publish a notice of proposed rule making. In any other case, it will deny the petition and will notify the petitioner with a simple statement of the grounds of denial.

§ 2.804 Notice of proposed rule making.

(a) When the Commission proposes to adopt, amend, or repeal a regulation it will cause to be published in the FEDERAL REGISTER a notice of proposed rule making, unless all persons subject to the notice are named and either are personally served or otherwise have actual notice in accordance with law.

(b) The notice will include:

(1) Either the terms or substance of the proposed rule, or a specification of the subjects and issues involved;

(2) The manner and time within which interested members of the public may comment, and a statement that copies of comments may be examined in the Public Document Room;

(3) The authority under which the regulation is proposed;

(4) The time, place, and nature of the public hearing, if any;

(5) If a hearing is to be held, designation of the presiding officer and any special directions for the conduct of the hearing; and

(6) Such explanatory statement as the Commission may consider appropriate.

(c) The publication or service of notice will be made not less than fifteen (15) days prior to the time fixed for hearing, if any, unless the Commission for good cause stated in the notice provides otherwise.

§ 2.805 Participation by interested persons.

(a) The Commission will afford interested persons an opportunity to participate in rule making through the submission of statements, information, opinions, and arguments in the manner stated in the notice. The Commission may grant additional reasonable opportunity for the submission of comments.

(b) The Commission may hold informal hearings at which interested persons may be heard, adopting procedures which in its judgment will best serve the purpose of the hearing.

§ 2.806 Commission action.

The Commission will incorporate in the notice of adoption of a regulation a concise general statement of its basis and purpose, and will cause the notice and regulation to be published in the FEDERAL REGISTER or served upon affected persons.

§ 2.807 Effective date.

The notice of adoption of a regulation will specify the effective date. Publication or service of the notice and regulation, other than one granting or recognizing exemptions or relieving from restrictions, will be made not less than thirty (30) days prior to the effective date unless the Commission directs otherwise on good cause found and published in the notice of rule making.

AVAILABILITY OF OFFICIAL RECORDS

§ 2.810 Public inspection, exceptions, requests for withholding.

(a) Except as provided in paragraph (b) of this section, all records of a proceeding subject to this part, and related documents which constitute public records of the Commission as defined in Part 9 of this chapter, will be made available for public inspection at the Public Document Room.

(b) A person who proposes that a document or a part be withheld in whole or in part from public disclosure shall at the time of filing it submit an application for withholding or make timely application thereafter identifying the document or part, and stating reasons why it should be withheld. He shall, as far as possible, incorporate in a separate paper any part sought to be withheld. The Commission may withhold any document or part from public inspection if disclosure of its contents is not required in the public interest and would adversely affect the interest of a person concerned. Withholding from public inspection shall not, however, affect the right, if any, of persons properly and directly concerned to inspect the document. If the applicant fails to comply with the requirements of this paragraph, the Commission will inform him that it intends to deny his application unless he complies with those requirements within the time stated in the notice.

(c) If a request is denied, the Commission will notify an applicant of the denial with a statement of reasons. The notice of denial will specify a time, not less than thirty (30) days after the date of the notice, when the document will be placed in the Public Document Room. If, within the time specified in the notice, the applicant requests withdrawal of his application, the document will not be placed in the Public Document Room.

Subpart I—Special Procedures Applicable to Adjudicatory Proceedings Involving Restricted Data

§ 2.900 Purpose.

This subpart is issued pursuant to section 181 of the Atomic Energy Act of 1954, as amended, to provide such procedures in proceedings subject to this part as will effectively safeguard and prevent disclosure of Restricted Data to unauthorized persons, with minimum impairment of procedural rights.

§ 2.901 Scope.

This subpart applies to all proceedings subject to this part.

§ 2.902 Definitions.

As used in this subpart:

(a) "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America, which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

(b) "Interested party" means a party having an interest in the issue or issues to which particular Restricted Data is relevant. Normally the interest of a party in an issue may be determined by examination of the notice of hearing, the answers and replies.

(c) The phrase "introduced into a proceeding" refers to the introduction or incorporation of testimony or documentary matter into any part of the official record of a proceeding subject to this part.

§ 2.903 Protection of Restricted Data.

Nothing in this subpart shall relieve any person from safeguarding Restricted Data in accordance with the applicable provisions of laws of the United States and rules, regulations or orders of any Government Agency.

§ 2.904 Classification assistance.

On request of any party to a proceeding or of the presiding officer, the Commission will designate a representative to advise and assist the presiding officer and the parties with respect to security classification of information and the safeguards to be observed.

§ 2.905 Access to Restricted Data for parties; security clearances.

(a) *Access to Restricted Data introduced into proceedings.* (1) Restricted Data which is within a category specified in Appendix A, Part 25 of this chapter, and which is introduced into a proceeding subject to this part, will be made available to any party to the proceeding, to counsel and to such other individuals as a party intends to use in connection with the preparation and presentation of his case, provided that each such person has the required security clearance.

(2) Other Restricted Data introduced into a proceeding subject to this part will be made available to any interested party having the required security clearance; to counsel for an interested party provided the counsel has the required security clearance; and to such additional persons having the required security clearance as the Commission or the presiding officer determines are needed by such party for adequate preparation or presentation of his case. Where the interest of such party will not be prejudiced, the Commission or presiding officer may postpone action upon an application for access under this subparagraph until after a notice of hearing, answers and replies have been filed.

(3) Any party desiring access to Restricted Data introduced into the record of a proceeding subject to this part should file an application for order granting access pursuant to this section.

(b) *Access to Restricted Data not introduced into proceedings.* (1) On application showing that access to Restricted Data may be required for the preparation of a party's case, and except as provided in paragraph (h) of this section, the Commission or the presiding officer will issue an order granting access to such Restricted Data to the party upon his obtaining the required security clearance, to counsel for the party upon their obtaining the required security clearance, and to such other individuals as may be needed by the party for the preparation and presentation of his case upon their obtaining the required clearance.

(2) Where the interest of the party applying for access will not be prejudiced, the Commission or presiding officer may postpone action on an application pursuant to this paragraph until after a notice of hearing, answers and replies have been filed.

(c) The Commission will consider requests for appropriate security clearances in reasonable numbers pursuant to this section. A reasonable charge will be made by the Commission for costs of security clearance pursuant to this Section.

(d) The presiding officer may certify to the Commission for its consideration and determination any questions relating to access to Restricted Data arising under this section. Any party affected by a determination or order of the presiding officer under this section may appeal forthwith to the Commission from the determination or order. The filing by the regulatory staff of an appeal from an order of a presiding officer granting access to Restricted Data shall stay the order pending determination of the appeal by the Commission.

(e) An application under this section for orders granting access to Restricted Data within a category specified in Appendix A, Part 25 of this chapter, will normally be acted upon by the presiding officer, or if a proceeding is not before a presiding officer, by the Commission. An application for an order granting access to Restricted Data which is not within such a category will be acted upon by the Commission.

(f) To the extent practicable, an application for an order granting access under this section shall describe the subjects of Restricted Data to which access is desired and the level of classification (confidential, secret or other) of the information; the reasons why access to the information is requested; the names of individuals for whom clearances are requested; and the reasons why security clearances are being requested for those individuals.

(g) On the conclusion of a proceeding, the Commission will terminate all orders issued in the proceeding for access to Restricted Data and all security clearances granted pursuant to them; and may issue such orders requiring the disposal of classified matter received pursuant to them or requiring the observance of other procedures to safeguard

such classified matter as it deems necessary to protect Restricted Data.

(h) The Commission may refuse to grant access to Restricted Data which is not within a category specified in Appendix A to Part 25 of this chapter on a determination that the granting of access will be inimical to the common defense and security.

§ 2.906 Obligation of parties to avoid introduction of Restricted Data.

It is the obligation of all parties in a proceeding subject to this part to avoid, where practicable, the introduction of Restricted Data into the proceeding. This obligation rests on each party whether or not all other parties have the required security clearance.

§ 2.907 Notice of intent to introduce Restricted Data.

(a) If, at the time of publication of a notice of hearing, it appears to the regulatory staff that it will be impracticable for it to avoid the introduction of Restricted Data into the proceeding, it will file a notice of intent to introduce Restricted Data.

(b) If, at the time of filing of an answer to the notice of hearing it appears to the party filing that it will be impracticable for the party to avoid the introduction of Restricted Data into the proceeding, the party shall state in the answer a notice of intent to introduce Restricted Data into the proceeding.

(c) If, at any later stage of a proceeding, it appears to any party that it will be impracticable to avoid the introduction of Restricted Data into the proceeding, the party shall give to the other parties prompt written notice of intent to introduce Restricted Data into the proceeding.

(d) Restricted Data shall not be introduced into a proceeding after publication of a notice of hearing unless a notice of intent has been filed in accordance with § 2.908, except as permitted in the discretion of the presiding officer when it is clear that no party or the public interest will be prejudiced.

§ 2.908 Contents of notice of intent to introduce Restricted Data.

(a) A party who intends to introduce Restricted Data shall file a notice of intent with the Secretary. The notice shall be unclassified and, to the extent consistent with classification requirements, shall include the following:

(1) The subject matter of the Restricted Data which it is anticipated will be involved;

(2) The highest level of classification of the information (confidential, secret, or other);

(3) The stage of the proceeding at which he anticipates a need to introduce the information; and

(4) The relevance and materiality of the information to the issues on the proceeding.

(b) In the discretion of the presiding officer, such notice, when required by § 2.907(c), may be given orally on the record.

§ 2.909 Rearrangement or suspension of proceedings.

In any proceeding subject to this part where a party gives a notice of intent to introduce Restricted Data, and the presiding officer determines that any other interested party does not have required security clearances, the presiding officer may in his discretion:

(a) Rearrange the normal order of the proceeding in a manner which gives such interested parties an opportunity to obtain required security clearances with minimum delay in the conduct of the proceeding.

(b) Suspend the proceeding or any portion of it until all interested parties have had opportunity to obtain required security clearances. No proceeding shall be suspended for such reasons for more than 100 days except with the consent of all parties or on a determination by the presiding officer that further suspension of the proceeding would not be contrary to the public interest.

(c) Take such other action as he determines to be in the best interest of all parties and the public.

§ 2.910 Unclassified statements required.

(a) Whenever Restricted Data is offered in evidence in a proceeding, the party offering it shall submit to the presiding officer and to all parties to the proceeding an unclassified statement setting forth the information in the classified matter as accurately and completely as possible.

(b) In accordance with such procedures as may be agreed upon by the parties or prescribed by the presiding officer, and after notice to all parties and opportunity to be heard thereon, the presiding officer shall determine whether the unclassified statement or any portion of it, together with any appropriate modifications suggested by any party, may be substituted for the classified matter or any portion of it without prejudice to the interest of any party or to the public interest.

(c) If the presiding officer determines that the unclassified statement, together with such unclassified modifications as he finds are necessary or appropriate to protect the interest of other parties and the public interest, adequately sets forth information in the classified matter which is relevant and material to the issues in the proceeding, he shall direct that the classified matter be excluded from the record of the proceeding. His determination will be considered by the Commission as a part of the decision in the event of review.

(d) If the presiding officer determines that an unclassified statement does not adequately present the information contained in the classified matter which is relevant and material to the issues in the proceeding, he shall include his reasons in his determination. This determination shall be included as part of the record and will be considered by the Commission in the event of review of the determination.

(e) The presiding officer may postpone all or part of the procedures established in this section until the reception of all other evidence has been completed. Service of the unclassified statement required in paragraph (a) of this section shall not be postponed if any party does not have access to Restricted Data.

§ 2.911 Admissibility of Restricted Data.

A presiding officer shall not receive any Restricted Data in evidence unless:

(a) The relevance and materiality of the Restricted Data to the issues in the proceeding, and its competence, are clearly established; and

(b) The exclusion of the Restricted Data would prejudice the interests of a party or the public interest.

§ 2.912 Weight to be attached to classified evidence.

In considering the weight and effect of any Restricted Data received in evidence to which an interested party has not had opportunity to receive access, the presiding officer and the Commission shall give to such evidence such weight as is appropriate under the circumstances, taking into consideration any lack of opportunity to rebut or impeach the evidence.

§ 2.913 Review of Restricted Data received in evidence.

At the close of the reception of evidence, the presiding officer shall review the record and shall direct that any Restricted Data be expunged from the record where such expunction would not prejudice the interests of a party or the public interest. Such directions by the presiding officer will be considered by the Commission in the event of review of the determinations of the presiding officer.

§ 2.914 Access under Part 25 of this chapter not affected.

Nothing in this subpart or any order issued in a proceeding pursuant to the regulations in this subpart shall be deemed to abridge access to Restricted Data to which any person may be entitled under the regulations in Part 25 of this chapter.

[F.R. Doc. 62-363; Filed, Jan. 12, 1962; 8:45 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 4—POLITICAL ACTIVITY

Investigation and Waiver of Hearing

Paragraph (b) of § 4.201 and § 4.206 of Subpart A are amended as set out below.

§ 4.201 Investigation.

* * * * *

(b) During the course of the investigation, the employee shall be afforded an opportunity to make a statement concerning the substance of the political activity disclosed by the investigation

and to furnish the names of witnesses he wishes to have interviewed.

§ 4.206 Waiver of hearing.

If the employee waives a hearing and the General Counsel agrees to such waiver, the case shall be submitted, on the record, to the Commission.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633; E.O. 10577, 19 F.R. 7521; 3 CFR 1954 Supp.)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 62-419; Filed, Jan. 12, 1962; 8:48 a.m.]

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of Health, Education, and Welfare

Effective upon publication in the FEDERAL REGISTER, paragraph (d)(3) of § 6.114 is amended as set out below.

§ 6.114 Department of Health, Education, and Welfare.

* * * * *

(d) *Social Security Administration.*

* * *

(3) Not to exceed 100 positions directly concerned with programs conducted by the Department in connection with the problems of Cuban refugees: *Provided,* That employment under this authority shall be temporary and no employment shall be made under it after June 30, 1963.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 62-418; Filed, Jan. 12, 1962; 8:48 a.m.]

Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 2]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.302 Navel Orange Regulation 2.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 11, 1962.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., January 14, 1962, and ending at 12:01 a.m., P.s.t., January 21, 1962, are hereby fixed as follows:

(i) District 1: 300,000 cartons;

(ii) District 2. 300,000 cartons;

(iii) District 3: unlimited movement;

(iv) District 4: unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 12, 1962.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62-493; Filed, Jan. 12, 1962; 11:21 a.m.]

[Grapefruit Reg. 1]

PART 909—GRAPEFRUIT GROWN IN ARIZONA; IN IMPERIAL COUNTY, CALIF., AND IN THAT PART OF RIVERSIDE COUNTY, CALIF., SITUATED SOUTH AND EAST OF WHITE WATER, CALIF.

Limitation of Shipments

§ 909.301 Grapefruit Regulation 1.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 909, as amended (7 CFR Part 909), regulating the handling of grapefruit grown in the State of Arizona; in Imperial County, California; and in that part of Riverside County, California, situated south and east of White Water, California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the Administrative Committee (established under the aforesaid amended marketing agreement and order), and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date. The Administrative Committee held an open meeting on January 4, 1962, to consider recommendations for a regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such open meeting; necessary supplemental economic and statistical information upon which this recommended regulation is based were received by the Fruit Branch on January 9, 1962; information regarding the provisions of the regulation recommended by the committee has been disseminated to shippers of grapefruit, grown as aforesaid, and this

section, including the effective time thereof, is identical with the recommendation of the committee; it is necessary, in order to effectuate the declared policy of the act, to make this section effective on the date hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective date hereof.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., January 14, 1962, and ending at 12:01 a.m., P.s.t., February 11, 1962, no handler shall handle:

(i) From the State of California or the State of Arizona to any point outside thereof any grapefruit of any variety grown in the State of Arizona; in Imperial County, California; or in that part of Riverside County, California, situated south and east of White Water, California, unless (*a*) such grapefruit grade at least U.S. No. 2: *Provided,* That included in the tolerances for defects permitted by such grade not more than 5 percent, by count, shall be allowed for grapefruit having peel more than one inch in thickness at the stem end, measured from the flesh to the highest point of the peel, and (*b*) not less than 50 percent, by count, of such grapefruit in any lot, and not less than 40 percent, by count, of such grapefruit in any individual container in such lot are well formed; or

(ii) From the State of California or the State of Arizona to any point outside thereof in the United States, any grapefruit, grown as aforesaid, which measure less than $3\frac{11}{16}$ inches in diameter, except that a tolerance of 5 percent, by count, of grapefruit smaller than the foregoing minimum size shall be permitted which tolerance shall be applied in accordance with the provisions for the application of tolerance, specified in the revised United States Standards for Grapefruit (California and Arizona), 7 CFR 51.925–51.955: *Provided,* That, in determining the percentage of grapefruit in any lot which are smaller than $3\frac{11}{16}$ inches in diameter, such percentage shall be based only on the grapefruit in such lot which are of a size $4\frac{2}{16}$ inches in diameter and smaller.

(2) As used herein, "handler," "variety," "grapefruit," and "handle" shall have the same meaning as when used in said amended marketing agreement and order; the terms "U.S. No. 2" and "well formed" shall each have the same meaning as when used in the aforesaid revised United States Standards for Grapefruit; and "diameter" shall mean the greatest dimension measured at right angles to a line from the stem to blossom end of the fruit.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 10, 1962.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62–429; Filed, Jan. 12, 1962; 8:49 a.m.]

[Lemon Reg. 2]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.302 Lemon Regulation 2.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011), because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 9, 1962.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., January 14, 1962, and ending at 12:01 a.m., P.s.t., January 21, 1962, are hereby fixed as follows:

(i) District 1: 18,600 cartons;

(ii) District 2: 148,800 cartons;

(iii) District 3: unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 11, 1962.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62–452; Filed, Jan. 12, 1962; 8:49 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Q]

PART 217—PAYMENT OF INTEREST ON DEPOSITS

Conversion of 6-months Time Certificate of Deposit Into 12-Months Certificate

§ 217.123 Conversion of 6-months time certificate of deposit into 12-months certificate.

(a) The Board of Governors has been requested to give its opinion on the question whether, under the current Supplement to the Board's Regulation Q, a 6-months certificate of deposit may be converted to a 12-months certificate bearing interest at the new maximum rate of 4 percent.

(b) In 1951, the Board took the position that where a time deposit subject to withdrawal upon 30 days' notice and bearing interest at 1 percent was amended so as to provide for 90 days' notice of withdrawal and interest at 1¼ percent, such action did not constitute payment before maturity in violation of Regulation Q, since the amendment made the deposit subject to more severe restriction as to withdrawal and did not result in payment to the depositor. (12 CFR 217.102) Similarly, conversion of an outstanding 6-months certificate, prior to its maturity, to a 12-months certificate would not constitute payment before maturity, since it would not cause the bank to pay out any funds to the depositor before the maturity date fixed by the original certificate. Consequently, as far as payment before maturity is concerned and without regard to maximum rate of interest, an outstanding certificate may be amended to extend its maturity either to a date 12 months after its original issue date or 12 months after the date of the amendment, or the same results may be accomplished by exchange of the outstanding certificate for a new certificate maturing either 12 months after the issue date of the original certificate or 12 months after the date of such exchange. However, the payment of the maximum rate of 4 per-

cent in any such case presents a different question.

(c) In the 1951 case above mentioned, the more restrictive withdrawal provision became effective at the time of the amendment, and the Board therefore held that the higher maximum rate applicable to the more restrictive withdrawal provision could be paid on the deposit after the date of such amendment. Applying the same principle to the conversion of a certificate with a specified maturity to one to which a higher maximum rate is applicable, the condition precedent to payment of the higher rate will exist only if the amended or new certificate will have a maturity to which such higher rate is applicable, computed from the date of such conversion. Accordingly, where a 6-months certificate is converted to a 12-months certificate, the presently permissible maximum rate of 4 percent applicable to a 12-months certificate may be paid from the date of the conversion (whether by amendment or exchange of certificate) only if the certificate will have at least 12 months to run after the conversion before the new maturity date.

(d) For example, if a 6-months certificate issued on October 1, 1961, should be amended or exchanged on February 1, 1962, so that the amended or new certificate would mature on February 1, 1963, a maximum rate of 4 percent could be paid for the period following the date of such amendment or exchange. If, however, the outstanding certificate should be amended or exchanged on February 1, 1962, so as to mature on October 1, 1962, the deposit would never have been effectively "tied up" for more than 8 months, and the maximum permissible rate would continue to be that applicable to a certificate with a maturity of more than 6 but less than 12 months. Without a restriction of this kind, the maturity of an outstanding certificate could be extended so as to enable the depositor to obtain interest at a rate higher than that allowed for the additional time the funds are on deposit and thus facilitate evasions of the limitations on maximum rates prescribed by the Board. For example, if a 12-months certificate could be amended to extend its maturity for an additional month, successive such amendments would make it possible for the depositor after 12 months to continue to obtain the maximum rate of 4 percent while in effect being able at all times to withdraw his deposit at the end of each additional month.

(Sec. 11(i), 38 Stat. 262; 12 U.S.C. 248(i). Interprets or applies secs. 19, 24, 38 Stat. 270, 273, as amended, sec. 8, 48 Stat. 168, as amended; 12 U.S.C. 264(c)(7), 371, 371a, 371b, 461)

Dated at Washington, D.C., this 5th day of January 1962.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 62-392; Filed, Jan. 12, 1962; 8:45 a.m.]

PART 261—RULES REGARDING INFORMATION, SUBMITTALS, AND REQUESTS

Correction

In § 261.4, as revised effective December 15, 1961 (F.R. Doc. 12232; 26 F.R. 12496), the reference to § 262.3(b) should read § 262.2(b).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 62-393; Filed, Jan. 12, 1962; 8:45 a.m.]

Chapter V—Federal Home Loan Bank Board

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. FSLIC-1, 265]

PART 563—OPERATIONS

Change of State-Chartered Mutual Insured Institution to a Guaranty or Permanent Stock Institution

JANUARY 9, 1962.

Resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of amendment of Part 563 of the rules and regulations for Insurance of Accounts (12 CFR Part 563) for the purpose of establishing minimum requirements for conversion from a State-chartered mutual institution to a guaranty or permanent stock type institution by the addition of a new section to said Part 563 setting out such minimum requirements, and notice and public procedure having been duly afforded (26 F.R. 11217), and for the purpose of effecting such amendment, hereby amends said Part 563, effective February 12, 1962, as follows:

Part 563 aforesaid is hereby amended by adding thereto, immediately after § 563.22, the following new section:

§ 563.22-1 Change of State-chartered mutual institution to a guaranty or permanent stock type institution.

No State-chartered mutual insured institution may change from that type of institution to a guaranty or permanent stock type institution, or an institution of a type having stock of a similar nature, unless the following minimum requirements are complied with:

(a) The change may be effected only in accordance with a written plan approved by the Corporation, and in passing upon any such plan the Corporation may give consideration to any element of good-will value.

(b) All requirements of or under State law shall have been complied with.

(c) The plan shall be submitted to the Corporation by action of the board of directors of such mutual institution prior to the giving of notice as hereinafter provided.

(d) The plan shall contain provisions which, in the judgment of the Corporation, are adequate to assure that each shareholder of record at such date as the plan shall fix with the approval of the Corporation will be entitled to receive, without any payment, a withdrawable account or accounts in the changed type of institution equal in withdrawable amount to the withdrawable amount of such shareholder's account or accounts in the mutual institution plus the full equivalent in cash of the value of such shareholder's interest in the excess of the net worth of the mutual institution over the withdrawable amount of all accounts in such institution, as determined by the Corporation at the expense of the institution. The issuance and amount of such stock shall be as required by the Corporation, provided that full payment for such proposed stock will be made of a sum which shall be at least equal to the minimum amount required by or under the laws of the State or 5 percent of total withdrawable accounts, whichever is more.

(e) The plan shall include appropriate provisions to prevent reduction of the Federal insurance reserve as a result of action under the plan.

(f) The institution shall give formal notice of a special meeting called to vote on the plan, which notice shall be in such form as may be prescribed by the Corporation and shall be mailed, postage prepaid, at least 15 and not more than 30 days prior to the date of such meeting, and shall set forth the terms of the plan, the rights of the members, and such other matters as the Corporation may require.

(g) The plan shall be approved by a vote of those representing at least two-thirds in withdrawable amounts of the outstanding shares of the mutual institution as of the end of the month next preceding the date of such meeting and by not less than two-thirds in number of the eligible votes cast at such meeting. Voting by proxy shall be subject to such requirements and restrictions as the Corporation may prescribe.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 62-420; Filed, Jan. 12, 1962; 8:48 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 61-FW-72]

PART 601—DESIGNATION OF CONTROLLED AIRSPACE, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Alteration of Control Zone and Designation of Transition Area

On September 23, 1961, a notice of proposed rule making was published in

the FEDERAL REGISTER (26 F.R. 8990) stating that the Federal Aviation Agency proposed to alter the control zone and designate a transition area at Alma, Ga.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the notice, the following actions are taken:

1. Part 601 (14 CFR Part 601, 26 F.R. 1908) is amended by adding the following section:

§ 601.10018 Alma, Ga., transition area.

The airspace extending upward from 1,200 feet above the surface within a 15-mile radius of Alma Intermediate Field (latitude 31°32'05" N., longitude 82°30'35" W.).

2. Section 601.2172 (14 CFR 601.2172) Alma, Ga., control zone is amended to read:

§ 601.2172 Alma, Ga., control zone.

Within a 5-mile radius of the Alma Intermediate Field (latitude 31°32'05" N., longitude 82°30'35" W.); and within 2 miles either side of the Alma VOR 036° and 225° radials extending from the 5-mile radius zone to 8 miles NE and SW of the VOR.

These amendments shall become effective 0001 e.s.t. March 8, 1962.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on January 9, 1962.

CHARLES W. CARMODY,
For Director,
Air Traffic Service.

[F.R. Doc. 62-390; Filed, Jan. 12, 1962; 8:45 a.m.]

[Reg. Docket No. 1023; Amdt. 83]

PART 610—MINIMUM EN ROUTE IFR ALTITUDES

Miscellaneous Amendments

This amendment is being adopted to insure the safety of IFR operations by establishing the minimum en route IFR altitudes for the route or portions thereof contained herein, and the altitudes which assure navigational coverage that is adequate and free of frequency interference for such routes or portions thereof.

As a situation exists which demands immediate action in the interest of safety, I find that compliance with the notice, public procedure and effective date provisions of the Administrative Procedure Act would be impracticable.

In view of the foregoing and pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 610 is hereby amended as follows:

Section 610.18 *Green Federal airway 8* is amended to delete:

From Cold Bay, Alaska; to LFR King Salmon, Alaska, LFR; MEA 4,000.

Section 610.107 *Amber Federal airway 7* is amended to read in part:

From Millinocket, Maine, LFR; to Presque Isle, Maine, LFR; MEA 3,500.

Section 610.299 *Red Federal airway 99* is amended to read in part:

From Iliamna, Alaska, LFR; to Bruin Bay INT, Alaska; MEA 6,000.

Section 610.625 *Blue Federal airway 25* is amended to read in part:

From Gulkana, Alaska, LFR; to *Big Delta, Alaska, LFR; MEA 13,000. *10,600—MCA Big Delta LFR, southbound.

Section 610.1001 *Direct routes—U.S.* is amended to delete:

From Lanai, TH., VOR; to *Southgate INT, TH.; MEA 5,000. *5,000—MCA Southgate INT, eastbound.

From Lanai, TH., VOR; to Makapun Pt. LF/RBN; MEA 5,000.

From Maui, TH., LFR; to Makapun Pt. LF/RBN; MEA 6,000.

From Fremont, Calif., LF/RBN; to Altamont INT, Calif., southwestbound only; MEA 5,000.

From Fremont, Calif., LF/RBN; to Bay Point, Calif., FM, southwestbound only; MEA 6,000.

From Fremont, Calif., LF/RBN; to Half Moon Bay INT, Calif.; MEA 4,500.

From Tampa, Fla., VOR; to West Palm Beach, Fla., VOR; MEA 4,000.

From West Palm Beach, Fla., LFR; to Int. 300 brg from West Palm Beach LFR and 045 brg from Fort Myers LF/RBN; MEA 1,200.

From Int. 300 brg from West Palm Beach LFR and 045 brg from Fort Myers LF/RBN; to Tampa, Fla., LFR; MEA 2,100.

From Orlando, Fla., LFR; to Tampa, Fla., VOR (ORL–225 and TPA–275); MEA 1,900.

From Valdosta, Ga., VOR; to Genoa INT, Fla.; MEA 1,300.

Section 610.1001 *Direct routes—U.S.* is amended by adding:

From Allendale, S.C., VOR; to Thomas INT, S.C.; MEA 2,000.

Section 610.6001 *VOR Federal airway 1* is amended to read in part:

From Charleston, S.C., VOR; to *Davis INT, S.C.; MEA 1,300. *3,000—MRA.

Section 610.6002 *VOR Federal airway 2* is amended to read in part:

From Mullan Pass, Idaho, VOR; to Missoula, Mont., VOR; MEA 10,000.

From Albany, N.Y., VOR; to *Melrose INT, N.Y.; MEA 3,000. *4,600—MCA Melrose INT, eastbound.

From Melrose INT, N.Y.; to *Griswoldville INT, Mass.; MEA 5,600. *4,300—MCA Griswoldville INT, westbound.

Section 610.6003 *VOR Federal airway 3* is amended to read in part:

From Daytona Beach, Fla., VOR, via E alter.; to *Croaker INT, Fla., via E alter.; MEA **2,000. *3,500—MRA. **1,100—MOCA.

From Croaker INT, Fla., via E alter.; to Marion INT, Fla., via E alter.; MEA *2,000. *1,100—MOCA.

From Sea Island INT, Ga., via E alter.; to *Sapelo INT, Ga., via E alter.; MEA **2,000. *4,000—MRA. **1,000—MOCA.

From Sapelo INT, Ga., via E alter.; to *Catherine INT, Ga., via E alter.; MEA **2,000. *4,000—MRA. **1,100—MOCA.

From Catherine INT, Ga., via E alter.; to Savannah, Ga., VOR via E alter.; MEA *2,000. *1,500—MOCA.

Section 610.6004 *VOR Federal airway 4* is amended to read in part:

From Allegheny INT, Pa.; to Johnstown, Pa., VOR; MEA 4,500.

Section 610.6006 *VOR Federal airway 6* is amended to read in part:

From Cherokee, Wyo., VOR; to Medicine Bow, Wyo., VOR; MEA 11,000.

From Cherokee, Wyo., VOR, via N alter.; to Medicine Bow, Wyo., VOR, via N alter.; MEA 11,000.

From Medicine Bow, Wyo., VOR; to Bear Creek INT, Wyo.; MEA 10,500.

From *Lyman INT, Iowa; to **Middle River INT, Iowa; MEA 2,600. *3,500—MRA. **3,000—MRA.

From *Newcastle INT, Calif., via N alter.; to Blue Canyon INT, Calif., via N alter.; southwest bound, MEA 7,000; northeast bound, MEA 11,000. *7,500—MCA Newcastle INT, northeast bound.

From Wauseon INT, Ohio; to Waterville, Ohio, VOR; MEA *2,000. *1,800—MOCA.

Section 610.6008 *VOR Federal airway 8* is amended to read in part:

From *Lyman INT, Iowa; to **Middle River INT, Iowa; MEA 2,600. *3,500—MRA. **3,000—MRA.

From Hawkins INT, Calif., via N alter.; to *Barstow INT., Calif., via N alter.; MEA 12,500. *8,500—MCA Barstow INT, southwest bound.

Section 610.6013 *VOR Federal airway 13* is amended to read in part:

From Neosho, Mo., VOR, via W alter.; to Butler Mo., VOR, via W alter.; MEA 3,000.

From Butler, Mo., VOR; to Kansas City, Mo., VOR; MEA 3,000.

Section 610.6014 *VOR Federal airway 14* is amended to read in part:

From *Norge INT, Okla., via S alter.; to Oklahoma City, Okla., VOR, via S alter.; MEA 2,800. *4,300—MRA.

From Albany, N.Y., VOR; to *Melrose INT, N.Y.; MEA 3,000. *4,600—MCA Melrose INT, eastbound.

From Melrose INT, N.Y.; to *Griswoldville INT, Mass.; MEA 5,600. *4,300—MCA Griswoldville INT, westbound.

From *Coldwater INT, Ind.; to **Rockford INT, Ohio; MEA ***3,000. *3,000—MRA. **3,000—MRA. ***2,200—MOCA.

From Rockford INT, Ohio; to Findlay, Ohio, VOR; MEA *3,000. *2,500—MOCA.

Section 610.6015 *VOR Federal airway 15* is amended to read in part:

From Dallas, Tex., VOR; to Prosper INT, Tex.; MEA 2,100.

Section 610.6016 *VOR Federal airway 16* is amended to read in part:

From Texarkana, Ark., VOR; to Hope INT, Ark.; MEA 1,700.

From Hope INT, Ark.; to Grapevine INT, Ark.; MEA *3,200. *1,500—MOCA.

From Mineral Wells, Tex., VOR; to Dallas, Tex., VOR; MEA 2,500.

Section 610.6018 *VOR Federal airway 18* is amended to read in part:

From *Ashton INT, S.C.; to **Ruffin INT, S.C.; MEA 1,500. *2,500—MRA. **2,400—MRA.

Section 610.6019 *VOR Federal airway 19* is amended to delete:

From *Billings, Mont., VOR, via W alter.; to Cushman INT, Mont., via W alter.; southeastbound, MEA 6,000; northwestbound,

MEA 11,000. *6,800—MCA Billings VOR, northwestbound.

From Cushman INT, Mont., via W alter.; to *Lewistown, Mont., VOR, via W alter.; MEA 11,000. *9,500—MCA Lewistown VOR, southeastbound.

Section 610.6021 *VOR Federal airway 21* is amended to read in part:

From Pocatello, Idaho, VOR; to Idaho Falls, Idaho, VOR; MEA 7,000.

From Idaho Falls, Idaho, VOR; to *Dubois, Idaho, VOR; MEA 7,500. *9,600—MCA Dubois VOR, northbound.

From Idaho Falls, Idaho, VOR, via E alter.; to Dubois, Idaho, VOR, via E alter.; MEA 7,500.

From Helena, Mont., VOR, via W alter.; to *Simms INT, Mont., via W alter.; MEA 9,500. *9,500—MRA.

From Simms INT, Mont., via W alter.; to Choteau INT, Mont., via W alter.; MEA 9,500.

Section 610.6035 *VOR Federal airway 35* is amended to read in part:

From St. Petersburg, Fla., VOR, via W alter.; to *Oyster INT, Fla., via W alter.; MEA 1,300. *3,400—MRA.

Section 610.6050 *VOR Federal airway 50* is amended to read in part:

From Indianapolis, Ind., VOR, via N alter.; to *Cowan INT, Ohio, via N alter.; MEA 2,800. *4,000—MRA.

Section 610.6055 *VOR Federal airway 55* is amended to read in part:

From Dayton, Ohio, VOR, via E alter.; to *Rockford INT, Ohio, via E alter.; MEA 2,300. *3,000—MRA.

From Rockford INT, Ohio, via E alter.; to Fort Wayne, Ind., VOR, via E alter.; MEA 2,300.

Section 610.6056 *VOR Federal airway 56* is amended to read in part:

From Monetta INT, S.C., via N alter.; to *Summit INT, S.C., via N alter.; MEA 1,700. *2,300—MRA.

From Summit INT, S.C., via N alter.; to Columbia, S.C., VOR, via N alter.; MEA 1,700.

Section 610.6066 *VOR Federal airway 66* is amended to read in part:

From Denton INT, Tex.; to Prosper INT, Tex.; MEA *2,100. *1,800—MOCA.

Section 610.6068 *VOR Federal airway 68* is amended to read in part:

From Andrews INT, Tex.; to Pipe Line INT, Tex.; MEA *4,800. *4,500—MOCA.

From Johnson INT, Tex.; to *Sterling INT, Tex.; MEA **5,000. *5,000—MRA. **3,800—MOCA.

Section 610.6072 *VOR Federal airway 72* is amended to read in part:

From Bennington INT, Vt.; to *Newfane INT, Vt.; MEA **6,000. *6,000—MCA Newfane INT, westbound. **5,700—MOCA.

Section 610.6077 *VOR Federal airway 77* is amended to read in part:

From *Norge INT, Okla.; to Oklahoma City, Okla., VOR; MEA 2,800. *4,300—MRA.

Section 610.6081 *VOR Federal airway 81* is amended to read in part:

From *Hale INT, Tex.; to Plainview INT, Tex.; MEA 4,500. *8,000—MRA.

Section 610.6083 *VOR Federal airway 83* is amended to read in part:

From Santa Fe, N. Mex., VOR; to Taos, N. Mex., VOR; MEA 11,000.

Section 610.6085 *VOR Federal airway 85* is amended to read:

From Medicine Bow, Wyo., VOR, via W alter.; to *Casper, Wyo., VOR, via W alter.; MEA 11,000. *9,500—MCA Casper VOR, southbound.

Section 610.6088 *VOR Federal airway 88* is amended to read in part:

From Vinita INT, Okla.; to *Waco INT, Mo.; MEA **6,500. *6,500—MCA Waco INT, southwestbound. **2,300—MOCA.

Section 610.6097 *VOR Federal airway 97* is amended to read in part:

From St. Petersburg, Fla., VOR, via W alter; to *Oyster INT, Fla., via W alter.; MEA 1,300. *3,400—MRA.

Section 610.6100 *VOR Federal airway 100* is amended to read in part:

From Medicine Bow, Wyo., VOR; to *Wheatland INT, Wyo.; MEA 11,000. *9,200—MCA Wheatland INT, westbound.

Section 610.6104 *VOR Federal airway 104* is amended to read in part:

From Massena, N.Y., VOR; to *Malone INT, N.Y.; MEA 3,000. *3,500—MCA Malone INT, eastbound.

Section 610.6114 *VOR Federal airway 114* is amended to read in part:

From Gregg Co., Tex., VOR, via N alter.; to Marshall INT, Tex., via N alter.; MEA 1,900.

Section 610.6118 *VOR Federal airway 118* is amended to read in part:

From Medicine Bow, Wyo., VOR; to *Laramie, Wyo., VOR; MEA 9,000. *10,000—MCA Laramie VOR southeastbound.

Section 610.6120 *VOR Federal airway 120* is amended to read in part:

From Mullan Pass, Idaho, VOR; to Charlo INT, Mont.; westbound, MEA 10,000; eastbound, MEA 13,000.

From Charlo INT, Mont.; to Augusta INT, Mont.; MEA *13,000. *11,500—MOCA.

From Augusta INT, Mont.; to *Simms INT, Mont; westbound, MEA 10,000; eastbound, MEA 7,000. *9,500—MRA.

From Simms INT, Mont.; to *Ft. Shaw INT, Mont.; westbound, MEA 10,000; eastbound, MEA 7,000. *8,000—MRA.

From Lewistown, Mont., VOR; to Forestgrove INT, Mont.; MEA 8,000.

From Forest grove INT, Mont.; to Sumatra INT, Mont.; MEA 9,000.

From Sumatra INT, Mont.; to Miles City, Mont., VOR; MEA *8,000. *6,000—MOCA.

Section 610.6132 *VOR Federal airway 132* is amended to read in part:

From McCune INT, Kans., via S alter.; to Waco INT, Mo., via S alter.; MEA 3,000.

Section 610.6133 *VOR Federal airway 133* is amended to read in part:

From Saginaw, Mich., VOR; to Traverse City, Mich., VOR; MEA *3,000. *2,600—MOCA.

Section 610.6138 *VOR Federal airway 138* is amended to read in part:

From Medicine Bow, Wyo., VOR; to Cheyenne, Wyo., VOR; MEA 10,500.

From Medicine Bow Wyo., VOR, via N alter.; to Cheyenne, Wyo., VOR, via N alter.; MEA 10,500.

Section 610.6139 *VOR Federal airway 139* is amended to read in part:

From Providence, R.I., VOR; to Whitman, Mass., VOR; MEA 2,000.

From Whitman, Mass., VOR; to Boston, Mass., VOR; MEA 2,000.

Section 610.6157 *VOR Federal airway 157* is amended to read in part:

From Lotts INT, Ga.; to Allendale, S.C., VOR; MEA 1,600.

Section 610.6159 *VOR Federal airway 159* is amended to read in part:

From *Dixie Ranch INT, Fla., via W alter.; to Bailey INT, Fla., via W alter.; **1,800. *1,500—MRA. **1,200—MOCA.

From Bailey INT, Fla., via W alter.; to *Gentry INT, Fla., via W alter.; MEA 1,200. *1,500—MRA.

From Gentry INT, Fla., via W alter.; to *St. Cloud INT, Fla., via W alter.; MEA 1,300. *1,500—MRA.

From St. Cloud INT, Fla., via W alter.; to Orlando, Fla., VOR, via W alter.; MEA 1,300.

Section 610.6168 *VOR Federal airway 168* is amended to read in part:

From Medicine Bow, Wyo., VOR; to Scottsbluff, Nebr., VOR; MEA 10,200.

Section 610.6185 *VOR Federal airway 185* is amended to delete:

From Augusta, Ga., VOR, via W alter.; to *McCormick INT, S.C., via W alter.; MEA 2,000. *3,000—MRA.

From McCormick INT, S.C., via W alter.; to Honea INT, Ga., via W alter.; MEA 2,000.

From Honea INT, Ga., via W alter.; to Greenville, S.C., ILS loc., via W alter.; MEA 4,000.

From Greenville, S.C., ILS loc., via W alter.; to Tigerville INT, S.C., via W alter.; MEA 4,000.

From Tigerville INT, S.C., via W alter.; to Asheville, N.C., VOR, via W alter.; MEA 6,000.

Section 610.6185 *VOR Federal airway 185* is amended to read in part:

From Savannah, Ga., VOR; to *Springfield INT, Ga.; MEA 1,500. *5,200—MRA.

From Springfield INT, Ga.; to Kildare INT, Ga.; MEA 1,500.

From Kildare INT, Ga.; to *Sardis INT, Ga.; MEA **2,000. *2,100—MRA. **1,500—MOCA.

From Statesboro INT, Ga., via W alter.; to Dover INT, Ga., via W alter.; MEA 1,600.

From Augusta, Ga., VOR; to Greenwood, S.C., VOR; MEA *2,300. *2,100—MOCA.

From Greenwood, S.C., VOR; to *Inman INT, S.C.; MEA **3,000. *4,000—MCA Inman INT, northbound. **2,500—MOCA.

From Inman INT, S.C.; to Asheville, N.C., VOR; MEA 6,000.

Section 610.6187 *VOR Federal airway 187* is amended by adding:

From Billings, Mont., VOR; to *Judith Gap INT, Mont.; northwest bound, MEA 8,000; southeast bound, MEA 7,000. *10,000—MCA Judith Gap INT, northwestbound.

From Judith Gap INT, Mont.; to Hughesville INT, Mont.; 11,000.

From Hughesville INT, Mont.; to *Great Falls, Mont., VOR; 10,000. *7,400—MCA Great Falls VOR, southeastbound.

Section 610.6190 *VOR Federal airway 190* is amended to read in part:

From Oswego, Kans., VOR; to Waco INT, Mo.; MEA 3,000.

Section 610.6191 *VOR Federal airway 191* is amended to read in part:

From Memphis, Tenn., VOR; to Gilmore INT, Ark.; MEA *2,000. *1,700—MOCA.

From Gilmore INT, Ark.; to Walnut Ridge, Ark., VOR; MEA 2,300.

Section 610.6193 *VOR Federal airway 193* is amended to read in part:

From White Cloud, Mich., VOR; to Traverse City, Mich., VOR; MEA 3,000.

Section 610.6198 *VOR Federal Airway 198* is amended to read in part:

From Rocksprings, Tex., VOR; to *Haby INT, Tex.; MEA **5,000. *5,000—MRA. **3,800—MOCA.

Section 610.6210 *VOR Federal airway 210* is amended to read in part:

From Indianapolis, Ind., VOR; to *Cowan INT, Ohio; MEA 2,800. *4,000—MRA.
From Cowan INT, Ohio; to Dawn INT, Ohio; MEA *4,000. *2,500—MOCA.
From *Barstow INT, Calif.; to Hector, Calif., VOR; MEA 3,000. *8,500—MCA Barstow INT, southwestbound.

Section 610.6211 *VOR Federal airway 211* is amended to read in part:

From Rocksprings, Tex., VOR; to *Sabinal INT, Tex.; MEA **5,500. *5,500—MRA. **3,800—MOCA.

Section 610.6213 *VOR Federal airway 213* is amended to read in part:

From Woodstown, N.J., VOR; to Columbus INT, N.J.; MEA 2,000.

Section 610.6217 *VOR Federal airway 217* is amended to read in part:

From Green Bay, Wis., VOR; to Rhinelander, Wis., VOR; MEA 3,000.

Section 610.6222 *VOR Federal airway 222* is amended to read in part:

From Ozona INT, Tex.; to Junction, Tex., VOR; MEA *6,000. *3,900—MOCA.

Section 610.6231 *VOR Federal airway 231* is amended to read:

From Missoula, Mont., VOR; to Charlo INT, Mont.; MEA 10,000.

Section 610.6233 *VOR Federal airway 233* is amended to delete:

From Peoria, Ill., VOR; to Bradford, Ill., VOR; MEA 2,100.
From Bradford, Ill., VOR; to Annawan INT, Ill.; MEA 2,100.
From Annawan INT, Ill.; to Cordova, Ill., VOR; MEA 2,000.

Section 610.6233 *VOR Federal airway 233* is amended by adding:

From Springfield, Ill., VOR, via E alter.; to Peoria, Ill., VOR, via E alter.; MEA 2,300.
From Peoria, Ill., VOR; to Cordova, Ill., VOR; MEA 2,100.

Section 610.6235 *VOR Federal airway 235* is amended to read:

From *Provo, Utah, VOR; to Fort Bridger, Wyo., VOR; MEA 14,000. *12,500—MCA Provo VOR, northeastbound.

Section 610.6253 *VOR Federal airway 253* is amended to read in part:

From Lucin, Utah, VOR; to Rock Creek INT, Idaho; MEA *11,000. *10,000—MOCA.

Section 610.6262 *VOR Federal airway 262* is amended by adding:

From Peoria, Ill., VOR; to Bradford, Ill., VOR; MEA 2,100.

Section 610.6267 *VOR Federal airway 267* is amended to read in part:

From *Dixie Ranch INT, Fla.; to Bailey INT, Fla.; MEA **1,800. *1,500—MRA. **1,200—MOCA.
From Bailey INT, Fla.; to *Gentry INT, Fla.; MEA 1,200. *1,500—MRA.
From Gentry INT, Fla.; to *St. Cloud INT, Fla.; MEA 1,300. *1,500—MRA.
From St. Cloud INT, Fla.; to Orlando, Fla., VOR; MEA 1,300.

Section 610.6275 *VOR Federal airway 275* is amended to read in part:

From Cincinnati, Ohio, VOR; to Camden INT, Ohio; MEA 2,500.
From Camden INT, Ohio; to Dayton, Ohio, VOR; MEA *2,500. *2,200—MOCA.

Section 610.6277 *VOR Federal airway 277* is amended to read in part:

From Rosewood, Ohio, VOR; to Anna INT, Ohio; MEA 2,300.
From Anna INT, Ohio; to *Rockford INT, Ohio; MEA **3,000. *3,000—MRA. **2,300—MOCA.
From Rockford INT, Ohio; to Fort Wayne, Ind., VOR; MEA 2,300.

Section 610.6278 *VOR Federal airway 278* is amended to read in part:

From Texico, N. Mex., VOR; to Plainview INT, Tex.; MEA *5,500. *5,200—MOCA.
From Plainview INT, Tex.; to Guthrie, Tex., VOR; MEA *6,500. *5,200—MOCA.

Section 610.6284 *VOR Federal airway 284* is amened to read in part:

From Ozona INT, Tex.; to San Angelo, Tex., VOR; MEA *6,000. *3,700—MOCA.

Section 610.6295 *VOR Federal airway 295* is amended to read in part:

From Vero Beach, Fla., VOR; to Bailey INT, Fla.; MEA 1,300.
From Bailey INT, Fla.; to *Gentry INT, Fla.; MEA 1,200. *1,500—MRA.
From Gentry INT, Fla.; to *St. Cloud INT, Fla.; MEA 1,300. *1,500—MRA.
From St. Cloud INT, Fla.; to Orlando, Fla., VOR; MEA 1,300.

Section 610.6401 *Hawaii VOR Federal airway 1* is amended to read:

From Lanai, Hawaii, VOR; to Mango INT, Hawaii; MEA 4,600.
From Mango INT, Hawaii; to Harpoon INT, Hawaii; MEA 9,000.
From Harpoon INT, Hawaii; to Upolu Point, Hawaii, VOR; MEA 6,000.
From Upolu Point, Hawaii, VOR; to Paradise INT, Hawaii; MEA 6,000.
From Paradise INT, Hawaii; to *Grass Shack INT, Hawaii; MEA 3,000.
From Grass Shack INT, Hawaii; to Hibiscus INT, Hawaii; MEA 4,000.
From Hibiscus INT, Hawaii; to Hilo, Hawaii, VOR; MEA 3,000.

Section 610.6402 *Hawaii VOR Federal airway 2* is amended to read:

From South Kauai, Hawaii, VOR; to Lihue, Hawaii, VOR; MEA 5,000.
From Lihue, Hawaii, VOR; to Seaweed INT, Hawaii; southeastbound, MEA 3,000; northwestbound, MEA 4,000.
From Seaweed INT, Hawaii; to Breakers INT, Hawaii; MEA 4,000.
From Breakers INT, Hawaii; to Honolulu, Hawaii, VOR; MEA 3,600.
From Honolulu, Hawaii, VOR; to Kahala INT, Hawaii; MEA 5,000.
From *Kahala INT, Hawaii; to Penguin INT, Hawaii; MEA 2,000. *4,000—MCA Kahala INT, northwestbound.
From Penguin INT, Hawaii; to *Lanai, Hawaii, VOR; MEA 4,000. *4,600—MCA Lanai VOR, eastbound.
From Honolulu, Hawaii, VOR, via S alter.; to Ono INT, Hawaii, via S alter.; northwestbound, MEA 4,000; southeastbound, MEA 3,000.
From *Ono INT, Hawaii, via S alter.; to Sampan INT, Hawaii, via S alter.; MEA 2,000. *4,000—MCA Ono INT, northwestbound.
From Sampan INT, Hawaii, via S alter.; to *Lanai, Hawaii, VOR, via S alter.; MEA 4,000. *4,600—MCA Lanai VOR, eastbound.
From Lanai, Hawaii, VOR; to Mango INT, Hawaii; MEA 4,600.
From Mango INT, Hawaii; to Harpoon INT, Hawaii; MEA 9,000.
From Harpoon INT, Hawaii; to Upolu Point, Hawaii, VOR; MEA 6,000.
From Upolu Point, Hawaii, VOR; to Paradise INT, Hawaii; MEA 6,000.
From Paradise INT, Hawaii; to Hilo, Hawaii, VOR; MEA 4,000.
From *Hilo, Hawaii, VOR; to 33 miles E from Hilo VOR; MEA 2,000. *3,000—MCA Hilo VOR, northwestbound.

Section 610.6403 *Hawaii VOR Federal airway 3* is amended to read in part:

From *Hilo, Hawaii, VOR; to **Grass Shack INT, Hawaii; MEA 2,000. *3,000—MCA Hilo VOR, southbound. **3,000—MRA.

Section 610.6405 *Hawaii VOR Federal airway 5* is amended to read:

From Southgate INT, Hawaii; to Sampan INT, Hawaii; MEA 2,000.
From Sampan INT, Hawaii; to *Lanai, Hawaii, VOR; MEA 4,000. *4,600—MCA Lanai VOR, eastbound.
From Lanai, Hawaii VOR; to Mango INT, Hawaii; MEA 4,600.
From Mango INT, Hawaii; to *Kahului Hawaii, VOR; MEA 6,000. *6,000—MCA Kahului VOR, southbound.

Section 610.6410 *Hawaii VOR Federal airway 10* is deleted:

Section 610.6411 *Hawaii VOR Federal airway 11* is amended to read:

From INT 138 M rad Lanai VOR and 200 M rad Upolu Point VOR; to Upolu Point, Hawaii, VOR; MEA 6,000.
From Upolu Point, Hawaii, VOR; to Sweet Pea INT, Hawaii; MEA 5,000.

Section 610.6412 *Hawaii VOR Federal airway 12* is amended to read in part:

From Swordfish INT, Hawaii; to Orchard INT, Hawaii; westbound, MEA 7,000; eastbound, MEA 4,000.
From Orchard INT, Hawaii; to Breakers INT, Hawaii; MEA 4,000.
From Breakers INT, Hawaii; to Honolulu, Hawaii, VOR; MEA 3,600.

Section 610.6413 *Hawaii VOR Federal airway 13* is amended to read:

From Lihue, Hawaii, VOR; Hula Girl INT, Hawaii; MEA 4,000.
From Hula Girl INT, Hawaii; to Koko Head Hawaii, VOR; northeastbound, MEA 4,500; southwestbound, MEA 4,000.

Section 610.6414 *Hawaii VOR Federal airway 14* is added to read:

From Dogwood INT, Hawaii; to South Kauai, Hawaii, VOR; MEA 6,000.
From South Kauai, Hawaii, VOR; to Hula Girl INT, Hawaii; MEA 4,000.
From Hula Girl INT, Hawaii; to Koko Head, Hawaii, VOR; northeastbound, MEA 4,500; southwestbound, MEA 4,000.

Section 610.6415 *Hawaii VOR Federal airway 15* is amended by adding:

From Vanda INT, Hawaii; to South Kauai, Hawaii, VOR; MEA 6,000.
From South Kauai, Hawaii, VOR; to Int 097 M rad, South Kauai VOR and 119 M rad Lihue VOR; eastbound, MEA 4,000; westbound, MEA 5,000.
From Int 097 M rad, South Kauai VOR and 119 M rad Lihue VOR; to Breakers INT, Hawaii; MEA 4,000.
From Breakers INT, Hawaii; to Honolulu, Hawaii, VOR; MEA 3,600.
From Honolulu, Hawaii, VOR; to Koko Head, Hawaii, VOR; MEA 5,000.

Section 610.6436 *VOR Federal airway 436* is amended to read in part:

From *Chinitna INT, Alaska, via E alter.; to Homer, Alaska, VOR, via E alter.; MEA **3,300. *7,700—MCA Chinitna INT, westbound. **2,600—MOCA.

Section 610.6437 *VOR Federal airway 437* is amended by adding:

From Daytona Beach, Fla., VOR; to *Croaker INT, Fla.; MEA **2,000. *3,500—MRA. **1,100—MOCA.
From Croaker INT, Fla.; to Marion INT, Fla.; MEA *2,000. *1,100—MOCA.
From Marion INT, Fla.; to St. Johns INT, Fla.; MEA *8,000. *1,100—MOCA.
From St. Johns INT, Fla.; to Sea Island INT, Ga.; MEA *8,000. *1,000—MOCA.
From Sea Island INT, Ga.; to *Sapelo INT, Ga.; MEA **2,000. *4,000—MRA. *1,000—MOCA.
From Sapelo INT, Ga.; to *Catherine INT, Ga.; MEA **2,000. *4,000—MRA. **1,100—MOCA.
From Catherine INT, Ga.; to Savannah, Ga., VOR; MEA *2,000. *1,500—MOCA.

Section 610.6440 *VOR Federal airway 440* is amended to delete:

From Anchorage, Alaska, VOR; to *Alexander INT, Alaska; MEA **1,500. *5,400—MCA Anchorage VOR, southeastbound. **5,000—MCA Alexander INT, northwestbound.
From Alexander INT, Alaska; to Skwentna, Alaska, LFR; MEA 4,000.

Section 610.6440 *VOR Federal airway 440* is amended by adding:

From Anchorage, Alaska, VOR; to *Martha INT, Alaska; MEA 2,000. *5,000—MCA Martha INT, northwestbound.
From Martha INT, Alaska; to *Friday INT, Alaska; MEA 6,500. *7,000—MCA Friday INT, northwestbound.
From Friday INT, Alaska; to Puntilla Lake, Alaska, LF/RBN; MEA *11,500. *10,500—MOCA.
From Anchorage, Alaska, VOR, via N alter.; to *Alexander INT, Alaska, via N alter.; MEA 1,500. *5,000—MCA Alexander INT, northwestbound.
From Alexander INT, Alaska, via N alter.; to *Skwentna, Alaska, LFR, via N alter.; MEA 6,400. *7,000—MCA Skwentna LFR, northwestbound.
From Skwentna, Alaska, LFR, via N alter.; to Puntilla Lake, Alaska, LF/RBN, via N alter.; MEA 10,000.

Section 610.6450 *VOR Federal airway 450* is amended to read:

From Muskegon, Mich., VOR; to Larrabee INT, Wis.; MEA *3,800. *1,900—MOCA.
From Larrabee INT, Wis.; to Green Bay, Wis., VOR; MEA 3,000.

Section 610.6451 *VOR Federal airway 451* is added to read:

From Int. 192 M rad, Whitman, Mass., VOR and 128 M rad, Providence, R.I., VOR; to Whitman, Mass., VOR; MEA 1,500.
From Whitman, Mass., VOR; to Boston, Mass., VOR; MEA 1,500.

Section 610.6454 *VOR Federal airway 454* is amended to read in part:

From Liberty, N.C., VOR; to Lawrenceville, Va., VOR; MEA 5,000.

Section 610.6456 *VOR Federal airway 456* is amended to read in part:

From Copper INT, Alaska; to *Harriet INT, Alaska; MEA **13,000. *15,000—MRA. *11,000—MCA Harriet INT, Southwestbound. **12,100—MOCA.

Section 610.6477 *VOR Federal airway 477* is amended to read in part:

From *Magnolia INT, Tex., via W alter.; to Dobbin INT, Tex., via W alter.; MEA **3,000. *3,000—MRA. **2,100—MOCA.

Section 610.6490 *VOR Federal airway 490* is amended to read in part:

From Cambridge, N.Y., VOR; to Newfane INT, Vt.; MEA *6,000. *5,800—MOCA.
From Newfane INT, Vt.; to Manchester, N.H., VOR; MEA 5,000.

Section 610.6494 *VOR Federal airway 494* is amended to read in part:

From *Newcastle INT, Calif.; to **Auburn INT, Calif.; southwestbound, MEA 7,000; northeastbound, MEA 11,000. *7,500—MCA Newcastle INT, northeastbound. **9,000—MCA Auburn INT, eastbound.

Section 610.6494 *VOR Federal airway 494* is amended by adding:

From Elko, Nev., VOR; to Wells, Nev., VOR; MEA 13,000.
From Wells, Nev., VOR; to Etna INT, Utah; MEA 11,000.
From Etna INT, Utah; to Strevell INT, Utah; MEA 12,000.
From Strevell INT, Utah; to Malad City, Idaho, VOR; southwestbound, MEA 11,000; northeastbound, MEA 10,000.

Section 610.6504 *VOR Federal airway 504* is added to read:

From Nenana, Alaska, VOR; to Fairbanks, Alaska, VOR; MEA 3,900.

Section 610.6505 *VOR Federal airway 505* is added to read:

From Helena, Mont., VOR; to *Millegan INT, Mont.; MEA 11,000. *10,000—MRA. *10,000—MCA Millegan INT, southbound.
From Millegan INT, Mont.; to Great Falls, Mont., VOR; MEA 7,000.

Section 610.6810 *VOR Federal airway 810* is amended to read in part:

From Cherokee, Wyo., VOR; to Medicine Bow, Wyo., VOR; MEA 11,000.
From Medicine Bow, Wyo., VOR; to *Wheatland INT, Wyo.; MEA 11,000. *9,200—MCA Wheatland INT, westbound.

Section 610.6830 *VOR Federal airway 830* is amended to read in part:

From Texarkana, Ark., VOR; to Hope INT, Ark.; MEA 1,700.
From Hope INT, Ark.; to Grapevine INT, Ark.; MEA *3,200. *1,500—MOCA.

Section 610.6837 *VOR Federal airway 837* is amended to read in part:

From Providence, R.I., VOR; to Whitman, Mass., VOR; MEA 2,000.
From Whitman, Mass., VOR; to Cohasset INT, Mass.; MEA 2,000.

Section 610.6839 *VOR Federal airway 839* is amended to read in part:

From Lotts INT, Ga.; to Allendale, S.C., VOR; MEA 1,600.

Section 610.6853 *VOR Federal airway 853* is amended to read in part:

From Zanesville, Ohio, VOR; to Proctor INT, W. Va.; MEA 2,500.
From Proctor INT, W. Va.; to Morgantown, W. Va., VOR; MEA 4,000.

Section 610.6854 *VOR Federal airway 854* is amended to read in part:

From *Wheatland INT, Wyo.; to Medicine Bow, Wyo., VOR; MEA 11,000. *9,200—MCA Wheatland INT, westbound.
From Medicine Bow, Wyo., VOR; to Cherokee, Wyo., VOR; MEA 11,000.
From Blue Canyon INT, Calif.; to *Newcastle INT, Calif.; southwestbound, MEA 7,000; northeastbound, MEA 11,000. *7,500—MCA Newcastle INT, northeastbound.

Section 610.6881 *VOR Federal airway 881* is amended to read in part:

From Sardis INT, Ga.; to Dover INT, Ga.; MEA *2,000. *1,500—MOCA.

Section 610.6885 *VOR Federal airway 885* is amended to read in part:

From Providence, R.I., VOR; to Whitman, Mass., VOR; MEA 2,000.
From Whitman, Mass., VOR; to Cohassett INT, Mass.; MEA 2,000.
From Washington, D.C., VOR; to Glen INT, Va.; MEA 2,100.
From Glen INT, Va.; to Barnsville INT Va.; MEA 2,300.
From Barnsville INT, Va.; to Martinsburg, W. Va., VOR; MEA 3,200.

Section 610.6887 *VOR Federal airway 887* is amended to read in part:

From Grapevine INT, Ark.; to Hope INT, Ark.; MEA *3,200. *1,500—MOCA.
From Hope INT, Ark.; to Texarkana, Ark., VOR; MEA 1,700.

Section 610.1508 *VOR Federal airway 1508* is amended to read in part:

From Cherokee, Wyo., VOR; to Medicine Bow, Wyo., VOR; MEA 14,500; MAA 24,000.
From Medicine Bow, Wyo., VOR; to Sidney, Nebr., VOR; MEA 14,500; MAA 24,000.

Section 610.1510 *VOR Federal airway 1510* is amended to read in part:

From Ft. Bridger, Wyo., VOR; to Rock Springs, Wyo., VOR; MEA 14,500; MAA 24,000.
From Sacramento, Calif., VOR; to Reno, Nev., VOR; MEA-14,500; MAA 24,000.

Section 610.1512 *VOR Federal airway 1512* is amended to read in part:

From San Francisco, Calif., VOR; to Linden, Calif., VOR; MEA 14,500; MAA 24,000.

Section 610.1524 *VOR Federal airway 1524* is amended to read in part:

From Farmington, N. Mex., VOR; to Alamosa, Colo., VOR; MEA 15,000; MAA 24,000.

Section 610.1529 *VOR Federal airway 1529* is amended to read in part:

From Laramie, Wyo., VOR; to Medicine Bow, Wyo., VOR; MEA 14,500; MAA 24,000.
From Medicine Bow, Wyo., VOR; to Casper, Wyo., VOR; MEA 14,500; MAA 24,000.

Section 610.1531 *VOR Federal airway 1531* is amended to delete:

From Int. 067 M Kremmling VOR and 278 M rads Denver VOR; to Kremmling, Colo., VOR; MEA 16,000; MAA 24,000.

Section 610.1543 *VOR Federal airway 1543* is amended to read in part:

From Truth or Consequences, N. Mex., VOR; to Socorro, N. Mex., VOR; MEA 14,500; MAA 24,000.
From Socorro, N. Mex., VOR; to Albuquerque, N. Mex., VOR; MEA 14,500; MAA 24,000.
From Albuquerque, N. Mex., VOR; to Santa Fe, N. Mex., VOR; MEA 14,500; MAA 24,000.
From Santa Fe, N. Mex., VOR; to Taos, N. Mex., VOR; MEA 14,500; MAA 24,000.
From Taos, N. Mex., VOR; to Alamosa, Colo., VOR; MEA 14,500; MAA 24,000.

Section 610.1547 *VOR Federal airway 1547* is amended to read in part:

From Los Angeles, Calif., VOR; to Ontario, Calif., VOR; MEA 14,500; MAA 24,000.
From Ontario, Calif., VOR; to Hector, Calif., VOR; MEA 14,500; MAA 24,000.
From Hector, Calif., VOR; to Las Vegas, Nev., VOR; MEA 19,000; MAA 24,000.
From Las Vegas, Nev., VOR; to Mormon Mesa, Nev., VOR; MEA 14,500; MAA 24,000.

Section 610.1553 *VOR Federal airway 1553* is amended to read in part:

From Sacramento, Calif., VOR; to Lake Tahoe, Calif., VOR; MEA 14,500; MAA 24,000.
From Lake Tahoe, Calif., VOR; to Reno, Nev., VOR; MEA 14,500; MAA 24,000.

Section 610.1553 *VOR Federal airway 1553* is amended by adding:

From Oakland, Calif., VOR; to Sacramento, Calif., VOR; MEA 14,500; MAA 24,000.

Section 610.1655 *VOR Federal airway 1655* is added to read:

From Jacksonville, Fla., VOR; to Savannah, Ga., VOR; MEA 15,000; MAA 23,000.

Section 610.1668 *VOR Federal airway 1668* is amended to read:

From Medicine Bow, Wyo., VOR; to Chadron, Nebr., VOR; MEA 14,500; MAA 24,000.

Section 610.1704 *VOR Federal airway 1704* is amened to read in part:

From Redmond, Oreg., VOR; to John Day, Oreg., VOR; MEA 14,500; MAA 24,000.
From John Day, Oreg., VOR; to Baker, Oreg., VOR; MEA 14,500; MAA 24,000.
From Baker, Oreg., VOR; to McCall, Idaho, VOR; MEA 14,500; MAA 24,000.

Section 610.1715 *VOR Federal airway 1715* is amended by adding:

From Santa Fe, N. Mex.; to Cimarron, N. Mex., VOR; MEA 15,500; MAA 24,000.
From Cimarron, N. Mex., VOR; to Tobe, Colo., VOR; MEA 14,500; MAA 24,000.

Section 610.1738 *VOR Federal airway 1738* is amended to read:

From Sacramento, Calif., VOR; to Lake Tahoe, Calif., VOR; MEA 14,500; MAA 24,000.
From Lake Tahoe, Calif., VOR; to Fallon, Nev., VOR; MEA 14,500; MAA 24,000.
From Fallon, Nev., VOR; to Mount Moses, Nev., VOR; MEA 14,500; MAA 24,000.
From Mount Moses, Nev., VOR; to Elko, Nev., VOR; MEA 14,500; MAA 24,000.

Section 610.1755 *VOR Federal airway 1755* is added to read:

From John Day, Oreg., VOR; to The Dalles, Oreg., VOR; MEA 14,500; MAA 24,000.
From The Dalles, Oreg., VOR; to Seattle, Wash., VOR; MEA 14,500; MAA 24,000.

Section 610.1756 *VOR Federal airway 1756* is added to read:

From Zuni, N. Mex., VOR; to Socorro, N. Mex., VOR; MEA 14,500; MAA 24,000.

(Secs. 313, 307, 72 Stat. 752, 749; 49 U.S.C. 1354, 1348)

These rules shall become effective February 8, 1962.

Issued in Washington, D.C., on January 5, 1962.

G. S. MOORE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 62-341; Filed, Jan. 12, 1962; 8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 8410 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Eastland Woolen Mills, Inc., et al.

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* § 13.1108–40 *Federal Trade Commission Act.* Subpart—Misbranding or mislabeling: § 13.1212 *Formal regulatory and statutory requirements:* § 13.1212–90 *Wool Products Labeling Act.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition:* § 13.1845–80 *Wool Products Labeling Act.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2–5, 54 Stat. 1128–1130; 15 U.S.C. 45, 68) [Cease and desist order, Eastland Woolen Mills, Inc. (Corinna, Maine), et al., Docket 8410, Sept. 28, 1961]

In the Matter of Eastland Woolen Mills, Inc., a Corporation, Max Striar, Louis Striar, Bernard Striar, Individually and as Officers of the Said Corporation, and as Partners Doing Business as Striar Textile Mill, and Ski-Land Woolen Mill

Consent order requiring manufacturers with headquarters in Corinna, Maine, to cease violating the Wool Products Labeling Act and the Federal Trade Commission Act by labeling and invoicing as "50% Wool—50% Reprocessed Wool" and tagging as "100% Reprocessed Wool", fabrics which contained substantial quantities of nonwoolen fibers, and by failing to disclose on fabric labels the true generic names and percentage of the constituent fibers.

The order to cease and desist is as follows:

It is ordered, That respondents Eastland Woolen Mills, Inc., a corporation, and Max Striar, Louis Striar and Bernard Striar, individually, and as officers of said corporation, and, as partners, doing business as Striar Textile Mill and Ski-Land Woolen Mill, or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen fabrics or other "wool products", as such products are defined in and subject to said Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. Failing to securely affix to, or place on, each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by section 4(a) (2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Eastland Woolen Mills, Inc., a corporation, and Max Striar, Louis Striar and Bernard Striar, individually and as officers of said corporation, and as partners doing business as Striar Textile Mill and Ski-Land Woolen Mill, or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of fabrics or other products in commerce, as "commerce" is defind in the Federal Trade Commission Act, forthwith cease and desist from: Misbranding such products by misrepresenting the character or amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto or in any other manner.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the above-named respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued September 25, 1961.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 62-394; Filed, Jan. 12, 1962; 8:45 a.m.]

[Docket 8276 c.o., 8276]

PART 13—PROHIBITED TRADE PRACTICES

E. J. Korvette, Inc., et al.

Subpart—Advetrtising falsely or misleadingly: § 13.155 *Prices:* § 13.155–40 *Exaggerated as regular and customary;* § 13.235 *Source or origin:* § 13.235–35 *History.* Subpart—Combining or conspiring; § 13.490 *To sell products deceptively.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, E. J. Korvette, Inc. (New York, N.Y.), et al., Docket 8276, Oct. 24, 1961]

Identical orders consented to by a New York City department store chain, three men's retail clothing stores in California, and six New York City men's clothing manufacturers, and issued in default against four New York City men's clothing manufacturers, requiring them to cease engaging in a common course

of action under which said chain arranged for the manufacturers to sew labels of the three fashionable California men's retail clothing stores into garments it purchased direct from the manufacturers and then falsely advertised the merchandise as previously stocked and offered for sale by the three retailers at stated "Original Prices" and that purchasers would save the differences between those amounts and advertised lower prices; and

Further consent order requiring said chain specifically to cease misrepresenting the sources, history, prices, and savings afforded purchasers of men's wearing apparel it sold under the above-described plan or otherwise.

Two identical orders (combining here all respondents) were issued separately against two groups of respondents as follows:

It is ordered, That respondent, E. J. Korvette, Inc., a corporation, its officers, agents, representatives and employees, respondent Richel, Inc., a corporation, doing business as Gus S. May, or doing business under any other trade name, its officers, agents, representatives and employees, respondent Ray Blumenthal, Jr., an individual doing business as Ray's Shop for Men, or doing business under any other trade name, his agents, representatives and employees, respondent Monte Factor, Ltd., a corporation, its officers, agents, representatives and employees, respondent Bank Street Clothes, Inc., a corporation, its officers, agents, representatives and employees, respondent Al Meirow, an individual doing business as Al Meirow, or doing business under any other trade name, his agents, representatives and employees, respondent Damon Creations, Inc., a corporation, its officers, agents, representatives and employees, respondents David Rappaport and Emanuel Rappaport, co-partners doing business as Lord Stuart Company, or doing business under any other trade name, their agents, representatives and employees, respondent Atlantic Shirt Co., Inc., a corporation, its officers, agents, representatives and employees, and respondent Lido Shirt Corporation, a corporation, its officers, agents, representatives and employees; and respondent corporations Blacker Bros., Inc., Kasinoff-Herman, Inc., Townsman Clothes, Inc., and Leslie Lloyds Clothes, Incorporated, and their respective officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the advertising, offering for sale, sale or distribution of apparel merchandise and related products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, or combination between said respondents and any other respondent or respondents in the instant case, or between said respondents and any others not parties hereto, to:

1. Engage in, maintain or perpetuate any activities, acts, or practices or to attempt to engage in, maintain or perpetuate any activities, acts or practices in purchasing, selling, manufacturing, or distributing said merchandise or products, whereby the origin, prior places of sale, past or present prices, or the quality or any other characteristic of said merchandise or products, is misrepresented, by any means or in any manner, or where the intent, purpose, or effect of same is to deceive, to mislead or to make any false claims concerning the origin, prior places of sale, prices, quality or other characteristics of said merchandise or products.

Corporate respondent E. J. Korvette, Inc., was additionally ordered as follows:

It is further ordered, That respondent E. J. Korvette, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of apparel merchandise and related products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication:

(a) That any of said merchandise or products so advertised, offered for sale, sold, or distributed has been owned, was a part of the stock of, had been offered for sale by, or had been purchased by, any corporation, firm or individual when such is not the fact;

(b) That any of said merchandise or products previously has been offered for sale or sold in any place or geographical location, when such is not the fact;

(c) That any amount is the price at which any of said merchandise or products previously has been offered for sale or sold by any corporation, firm or individual, when such is not the fact; or

(d) That any saving is afforded in the purchase of said merchandise or products from the retail price of any corporation, firm or individual, which previously had sold or offered to sell same, unless the price, at which said merchandise or products are offered by respondent, constitutes a reduction from the price at which said merchandise or products previously have been offered for sale or sold by said corporation, firm or individual in the recent regular course of business.

2. Misrepresenting, in any manner, savings available to purchasers at retail of any of said merchandise or products from respondent, or the amount by which the price of any of said merchandise or products is educed from the retail price at which said merchandise or products previously have been offered for sale by respondent or another person in the recent regular course of business.

By two separate "Decision of the Commission", etc., reports of compliance were required from each of the two groups of respondents as follows:

It is ordered, That the respondents ordered to cease and desist in the initial decisions herein shall, within sixty (60) days after service upon them of these orders, file with the Commission reports in writing setting forth in detail the manner and form in which they have complied with the orders to cease and desist contained in the aforesaid initial decisions.

Issued: October 24, 1961.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 62-395; Filed, Jan. 12, 1962; 8:45 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 19—CHEESES; PROCESSED CHEESES; CHEESE FOODS; CHEESE SPREADS, AND RELATED FOODS; DEFINITIONS AND STANDARDS OF IDENTITY

Swiss Cheese, Blue Cheese, and Certain Italian Style Cheeses; Rulings on Proposed Amendments Concerning Artificial Coloring and Bleaching

In the matter of amending the definitions and standards of identity for swiss cheese, blue cheese, gorgonzola cheese, provolone cheese, caciocavallo siciliano cheese, parmesan cheese, romano cheese, and asiago fresh cheese:

The Commissioner of Food and Drugs has considered the objections filed with respect to the final order issued in the above-entitled matter, published in the FEDERAL REGISTER of September 9, 1961 (26 F.R. 8487), and has concluded that the objections received did not afford a basis for a public hearing. Therefore, the order became effective November 8, 1961.

(Sec. 701, 52 Stat. 1055 as amended; 21 U.S.C. 371)

Dated: January 9, 1962.

GEO. P. LARRICK, *Commissioner of Food and Drugs.*

[F.R. Doc. 62-414; Filed, Jan. 12, 1962; 8:47 a.m.]

Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

SUBCHAPTER T—OPERATION AND MAINTENANCE

PART 221—OPERATION AND MAINTENANCE CHARGES

Colorado River Indian Irrigation Project, Arizona

There was published in the FEDERAL REGISTER on November 8, 1961 (26 F.R. 10516) a notice of intention to amend §§ 221.6 and 221.7 of 25 CFR to provide for an increase of the annual operation and maintenance assessment rate from $8.50 to $9.00 per acre on the Colorado

River Indian Irrigation Project, Arizona, and for an increase of the assessment rate for excess water from $1.75 to $2.00 per acre-foot.

Interested persons were given an opportunity to submit their comments, suggestions, or objections with respect to the proposed amendments to the Phoenix Area Director within thirty days of the date of publication of the notice in the FEDERAL REGISTER. Only one objection was received. Its contents have been considered. However, in the opinion of the Area Director the increases in assessment rates are necessary.

1. Section 221.6 is hereby amended to read as follows:

§ 221.6 Charges.

Pursuant to the provisions of the acts of Congress approved August 1, 1914, and March 7, 1928 (38 Stat. 583, 45 Stat. 210; 25 U.S.C. 385–387), the annual basic charge against the land to which water can be delivered under the Colorado River Indian Irrigation Project in Arizona, for the operation and maintenance of that project, is hereby fixed at $9.00 per irrigable acre, whether water is used or not. Payment of this charge will entitle the water user to but not in excess of, eight acre-feet of water per acre per annum on certain sandy areas as described in a schedule on file at the Colorado River Indian Agency, and available for inspection by interested parties, and to five acre-feet of water per annum per irrigable acre on all other lands. With the approval of the Superintendent, additional water, reasonably sufficient to carry away alkali salts, may be allowed on certain alkali tracts at no additional charge for the purpose of reclaiming lands by the usual methods, such as flooding and leaching. The foregoing charges and allotments of water shall become effective for the calendar year 1962 and continue in effect thereafter, until further notice.

2. Section 221.7 is hereby amended to read as follows:

§ 221.7 Excess water charges.

Additional water, if and when available, in excess of basic allowances, may be delivered upon written request to the Superintendent by landowners or users at the rate of $2.00 per acre-foot, or fraction thereof.

(60 Stat. 238; Order 2252, F.R. Doc. 46-16562, 11 F.R. 10296; Order 551, Amdt. 1)

JAMES B. RING,
Acting Area Director.

[F.R. Doc. 62-396; Filed, Jan. 12, 1962; 8:45 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER A—REGULATIONS

PART 536—AREA OF PRODUCTION

Definitions; Revision

On pages 8460 and 8461 of the FEDERAL REGISTER of September 8, 1961, there was published a notice of proposed rule making to revise the regulations governing the definition of "area of production" as that term is used in section 13(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)). Interested persons were given 15 days in which to submit written data, views or arguments with respect to the proposed regulations. No comments have been received. Accordingly, the proposed regulations are hereby adopted as set forth below without change, effective February 12, 1962.

Signed at Washington, D.C., this 5th day of January 1962.

CLARENCE T. LUNDQUIST,
Administrator.

Sec.

AUTHORITY: §§ 536.1 to 536.4 issued under 52 Stat. 1060; 29 U.S.C. 201 et seq. Additional authority is cited in parentheses following sections affected.

§ 536.1 "Area of production" as used in section 7(c) of the Fair Labor Standards Act.

(a) An employer shall be regarded as engaged in the first processing of any agricultural or horticultural commodity during seasonal operations within the "area of production" within the meaning of section 7(c) of the Fair Labor Standards Act if he is so engaged in an establishment which is located in the open country or in a rural community and in which such first processing is performed on commodities 95 percent of which come from normal rural sources of supply located not more than the following air-line distances from the establishment:

(1) With respect to grain, soybeans, eggs, or tobacco—50 miles;

(2) With respect to any other agricultural or horticultural commodities—20 miles.

(b) For the purpose of this section:

(1) "Open country or rural community" shall not include any city, town, or urban place of 2,500 or greater population or any area within:

(i) One air-line mile of any city, town, or urban place with a population of 2,500 up to but not including 50,000 or

(ii) Three air-line miles of any city, town, or urban place with a population of 50,000 up to but not including 500,000, or

(iii) Five air-line miles of any city with a population of 500,000 or greater, according to the latest available United States Census.

(2) The commodities shall be considered to come from "normal rural sources of supply" within the specified distances from the establishment if they are received (i) from farms within such specified distances, or (ii) from farm assemblers or other establishments through which the commodity customarily moves, which are within such specified distances and located in the open country or in a rural community, or (iii) from farm assemblers or other establishments not located in the open country or in a rural community provided it can be demonstrated that the commodities were produced on farms within such specified distances.

(3) The period for determining whether 95 percent of the agricultural or horticultural commodities are received from normal rural sources of supply shall be the last preceding calendar month in which operations were carried on for two workweeks or more, except that until such time as an establishment has operated for such a calendar month the period shall be the time during which it has been in operation.

(4) The percentage of commodities received from normal rural sources of supply within the specified distances shall be determined by weight, volume or other physical unit of measure, except that dollar value shall be used if different commodities received in the establishment are customarily measured in physical units that are not comparable.

(Sec. 7(c), 52 Stat. 1063, 29 U.S.C. 207(c))

§ 536.2 "Area of production" as used in section 13(a)(10) of the Fair Labor Standards Act.

(a) An individual shall be regarded as employed within the "area of production" within the meaning of section 13(a)(10) of the Fair Labor Standards Act in handling, packing, storing, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products:

(1) If the establishment where he is employed is located in the open country or in a rural community and 95 percent of the commodities on which such operations are performed by the establishment come from normal rural sources of supply located not more than the following air-line distances from the establishment:

(i) With respect to operations on fresh fruits and vegetables—15 miles;

(ii) With respect to the storing of cotton and any operations on commodities not otherwise specified in this subparagraph—20 miles;

(iii) With respect to the compressing and compress-warehousing of cotton, and operations on tobacco, grain, soybeans, poultry or eggs—50 miles.

(b) For the purposes of this section:

(1) "Open country or rural community" shall not include any city, town, or urban place of 2,500 or greater population, or any area within:

(i) One air-line mile of any city, town, or urban place with a population of 2,500 up to but not including 50,000, or

(ii) Three air-line miles of any city, town, or urban place with a population of 50,000 up to but not including 500,000, or

(iii) Five air-line miles of any city with a population of 500,000 or greater, according to the latest available United States Census.

(2) The commodities shall be considered to come from "normal rural sources

of supply" within the specified distances from the establishment if they are received (i) from farms within such specified distances, or (ii) from farm assemblers or other establishments through which the commodity customarily moves, which are within such specified distances and located in the open country or in a rural community, or (iii) from farm assemblers or other establishments not located in the open country or in a rural community provided it can be demonstrated that the commodities were produced on farms within such specified distances.

(3) The period for determining whether 95 percent of the commodities are received from normal rural sources of supply shall be the last preceding calendar month in which operations were carried on for two workweeks or more, except that until such time as an establishment has operated for such a calendar month the period shall be the time during which it has been in operation.

(4) The percentage of commodities received from normal rural sources of supply within the specified distances shall be determined by weight, volume or other physical unit of measure, except that dollar value shall be used if different commodities received in the establishment are customarily measured in physical units that are not comparable.

(Sec. 13(a)(10), 52 Stat. 1067, 29 U.S.C. 213(a)(10))

§ 536.3 "Area of production" as used in section 13(a)(17) of the Fair Labor Standards Act.

(a) An employee employed by an establishment commonly recognized as a country elevator and having not more than five employees (including such an establishment which sells products and services used in the operation of a farm) shall be regarded as employed within the "area of production", within the meaning of section 13(a)(17) of the Fair Labor Standards Act, if the establishment by which he is employed is located in the open country or in a rural community and 95 percent of the agricultural commodities received by the establishment for storage or for market come from normal rural sources of supply within the following air-line distances from the establishment:

(1) With respect to grain and soybeans—50 miles;

(2) With respect to any other agricultural commodities—20 miles.

(b) For the purpose of this section:

(1) "Open country or rural community" shall not include any city, town, or urban place of 2,500 or greater population or any area within:

(i) One air-line mile of the city, town, or urban place with a population of 2,500 up to but not including 50,000, or

(ii) Three air-line miles of any city, town, or urban place with a population of 50,000 up to but not including 500,000, or

(iii) Five air-line miles of any city with a population of 500,000 or greater, according to the latest available United States Census.

(2) The commodities shall be considered to come from "normal rural sources of supply" within the specified distances from the establishment if they are received (i) from farms within such specified distances, or (ii) from farm assemblers or other establishments through which the commodity customarily moves, which are within such specified distances and located in the open country or in a rural community, or (iii) from farm assemblers or other establishments not located in the open country or in a rural community provided it can be demonstrated that the commodities were produced on farms within such specified distances.

(3) The period for determining whether 95 percent of the commodities are received from normal rural sources of supply shall be the last preceding calendar month in which operations were carried on for two workweeks or more, except that until such time as an establishment has operated for such a calendar month the period shall be the time during which it has been in operation.

(4) The percentage of commodities received from normal rural sources of supply within the specified distances shall be determined by weight, volume or other physical unit of measure, except that dollar value shall be used if different commodities received in the establishment are customarily measured in physical units that are not comparable.

(Sec. 13(a)(17), added to sec. 13, 52 Stat. 1067, 29 U.S.C. 213, by sec. 9, Pub. Law 87-30)

§ 536.4 Petition for amendment of regulations.

Any interested person or association wishing a revision of any section of this part may submit in writing to the Administrator a petition for amendment thereof, setting forth the changes desired and the reasons for proposing them. If upon inspection of the petition the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with notice to interested parties or will make other provisions for affording interested parties an opportunity to present their views in support of or opposition to the proposed change.

[F.R. Doc. 62-397; Filed, Jan. 12, 1962; 8:45 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER P—RECORDS

PART 288—SCHEDULE OF FEES AND CHARGES FOR COPYING, CERTIFICATION, AND SEARCH OF RECORDS

The Assistant Secretary of Defense (Comptroller) approved the following revision of Part 288 on August 31, 1961, to be placed into operation as soon as practicable but in no event later than ninety (90) days after the approval date.

Sec.

AUTHORITY: §§ 288.1 to 288.6 issued under Title V, Independent Offices Appropriation Act of 1950 (5 U.S.C. 140) as amended.

§ 288.1 Purpose.

Part 289 of this chapter prescribed Department of Defense policies and procedures for developing an equitable and uniform system of charges for services and/or property which convey special benefits to recipients above and beyond those accruing to the public at large. This Part 288 designates certain types of common services relating to copying, certification and search of records that are rendered by the Department of Defense for which a prescribed fee shall be collected. In addition, this Part 288 establishes an amended schedule of fees that shall be collected for these services (Exhibit A, § 288.6).

§ 288.2 Applicability.

The provisions of this part are applicable to all components of the Department of Defense.

§ 288.3 Fees.

(a) *Services and fees.* The types of services rendered by the Department of Defense and its component agencies for which a prescribed fee shall be collected, subject to the exemptions indicated in § 288.3(b) are listed in § 288.6. The specific charges for such services are also indicated in § 288.6. No refunds of fees shall be made by reason of change in regulation, directive or fee schedule, or overpayments of one dollar ($1.00) or less.

(b) *Exemptions.* No fees shall be imposed for the following types of services when requests are received from the sources specified, provided the furnishing of such services is consistent with established policy, does not interfere with the mission of the furnishing agency, and the cost of the services can be provided with available funds. As used in this part, the term Armed Forces includes the Army, Navy, Air Force, Marine Corps and their civilian components.

(1) Any service requested by members of the Armed Forces when the document or information requested is required by such personnel in their capacity as members of the Armed Forces of the United States.

(2) Any service requested by members of the Armed Forces, who are in a casualty status, or by their next of kin or legal representatives; and requests for information from any source relating to a casualty.

(3) Any service requested by members (or retired members) of the Armed Forces for copies of or information from their own medical or dental records.

(4) Any service requested by members (or retired members) of the Armed Forces or their dependents for copies of or information from the medical or dental records of such dependents.

(5) The address of record of an active duty member or former member of the Armed Forces when it can be furnished informally through local director

(locator) reference, when requested by a member of the Armed Forces or a relative or legal representative of a member of the Armed Forces, or the address of record requested by any source when the address is required for the purpose of paying monies or forwarding property to a member or former member of the Armed Forces, or when the address is sought by a custodian or manager of property owned by a member or former member of the Armed Forces for purposes of communicating with the addressee regarding his property.

(6) Any service requested by or on behalf of a member or former member of the Armed Forces, or if deceased, their next of kin, pertaining to requests for:

(i) Information required to obtain financial benefits.

(ii) Document showing membership and military record in the Armed Forces if discharge or release was under honorable conditions.

(iii) Information relating to a decoration or award or information required for memorialization purposes.

(iv) Review or change in type of discharge or correction of records.

(v) Personal documents, e.g., birth certificates, when such documents were required to be furnished by the individual.

(7) Those services which are furnished free in accordance with statutes or Executive Orders.

(8) Information from or copies of medical and dental records and/or X-ray films of patients or former patients of military medical or dental facilities when such information is required for further medical or dental care and requests for such data are (i) submitted by an accredited medical facility, physician or dentist or (ii) requested by the patient, his next of kin or legal representative.

(9) Any service furnished relating to or in furtherance of the Armed Forces recruiting programs and any services furnished representatives of public information media or the general public in the interest of public understanding of the Armed Forces.

(10) Any service involving confirmation of employment or salaries of active or separated civilian or military personnel when requested by prospective employers or recognized sources of inquiry for credit or financial purposes.

(11) Any service requested by and furnished to a member of Congress for official use.

(12) Any service requested by a state, territorial, county or municipal government or an agency thereof which is carrying on a function related to or in furtherance of an objective of the Department of Defense.

(13) Any service requested by a court when the furnishing of such will serve as a substitute for personal court appearance of a military or civilian employee of the Department of Defense.

(14) Any service requested by a nonprofit organization which is carrying on a function related to or in furtherance of an objective of the Federal Government or in the interest of public safety, health and welfare.

(15) Any service requested when the cost of such services ultimately would be charged to the Federal Government.

(16) Any service requested by donors with respect to their gifts.

(17) Any request which results in an unsuccessful search of records other than requests to determine the existence or nonexistence of a record.

(18) Requests for service which are occasional and incidental (including any request from a resident of a foreign country), not of a type that is requested often, if it is administratively determined that a fee would be inappropriate in such an occasional case.

(19) Any request when the furnishing of the service without charge is an appropriate courtesy to a foreign country, international organization, or comparable fees are set on a reciprocal basis with a foreign country.

§ 288.4 Review of schedule of fees.

The schedule of fees shall be reviewed whenever significant changes in costs occur and at least once each year to determine whether a fee should be collected for any additional services rendered the public or whether any of the fees prescribed in the schedule should be changed or discontinued. Appropriate recommendations for change in the schedule of fees shall be submitted to the Assistant Secretary of Defense (Comptroller). The cost standards contained in Part 289 of this chapter shall be applied in establishing fees for additional services and for changing existing fees.

§ 288.5 Disposition of receipts.

As required by Part 289 of this chapter disposition of fees collected for services financed by working capital funds shall be made in accordance with regulations governing the use of working capital funds. In all other cases all fees or charges collected should be deposited in the General Fund of the Treasury as Miscellaneous Receipts unless other disposition is specifically authorized by law.

§ 288.6 Exhibit A—Schedule of fees.

Applicable to authorized services of copying, certifications and search of records rendered to the public by components of the Department of Defense.

Requests involving:	*Fee*
(1) Training and education, each (Including requests for transcripts, certificates and verification of attendance, course completion and graduation from service schools and other facilities.)	$2.50
(2) Medical and dental records of civilians (includes requests for information from or copies of medical records including clinical records, outpatient records, dental records and loan of X-rays):	
Up to and including two typewritten or two reproduced pages	2.00
Each additional page	1.00
Loan of each X-ray	1.00
(3) Medical and dental records of uniformed services personnel and their dependents when request is received from other than the member or their dependent (includes requests for information from or copies of medical records including clinical records, outpatient records, dental records and loan of X-rays).	
Up to and including two typewritten or two reproduced pages	$2.00
Each additional page	1.00
Loan of each X-ray	1.00
(4) Military membership and record:	
(i) Address of record, each	1.50
(ii) Certificate in lieu, statement of verification of service, or report of separation, each	2.50
(iii) Copy or extract of order or other record (excluding medical, dental and X-ray records), each	2.00
(iv) Furnishing information on decorations and awards to service organizations	2.00
(5) Photography:	
(i) Still pictorial or documentary photographic prints 8 x 10 black and white and not more than three prints may be sold from any individual negative on each order. Larger standard sizes of black and white prints will be furnished, if available, at proportionately higher fees.	
Single weight glossy finish, each	.55
Double weight matte finish, each	.60
4 x 5 color transparencies or color negative, each	5.00
8 x 10 color transparencies or color negative (in quantities not to exceed three copies any one view) each	10.00
Color prints will not be furnished for public use.	
(ii) Aerial Photographic Prints, contact prints, or exact negative sizes, single weight glossy or double weight semi-matte.	
Size 7 x 9" or 9 x 9", in quantities:	
1–100, each	.70
101–1,000, each	.55
Over 1,000, each	.50
Size 9 x 18", in quantities:	
1–100, each	1.40
101–1,000, each	1.10
Over 1,000, each	1.00
(iii) Aerial Photographic Indexes and Mosaic Copies in any number, size 20 x 24", each	1.20
(iv) Reproduction of cover overlays:	
Transparent Foil Film Overlays, each	1.50
Transparent Paper Overlays, each	.60
Transparent Paper Plot Maps, per square foot	.10
Photostat Plat Maps (maximum size 17½ x 23"), each	.65
(v) Motion picture, 16mm or 35mm black and white unedited footage and/or optical sound track, per foot	.10

Requests involving—Continued	Fee
(5) Photography—Continued	
Motion picture, etc.—Continued	
Color unedited footage:	
16mm, per foot	$.20
16mm, inter-negative	.25
35mm, per foot:	
Viewing or release print, each	.25
Separation master positive (3 required)	.75
Color inter-positive, each	.55
Color inter-negative, each	.55
Magnetic Tape (per foot)	
16mm (direct dubb), each	.05
35mm (direct dubb), each	.05
Searching (including overhead), each hour or fraction thereof (per hour)	5.00
All film used is duplication to furnish a requested end product shall be charged for on a per foot basis.	
Minimum charge (including stock search) per order	10.00
(6) Construction and engineering information:	
Copies of aerial photographic maps, specifications, permits, charts, blueprints, and other technical engineering documents.	
Searching per hour or fraction thereof (including overhead costs)	2.00
First print	.50
Each additional print of same document	.25
(7) Copies of medical articles and illustrations. Standards contained in Part 289 will be utilized in computing costs.	
(8) Claims and Litigations:	
(i) Requests from litigants pertaining to private litigation. (If not covered in § 288.6(a) (2) and (3).)	
Searching per hour or fraction thereof (including overhead costs)	2.50
Processing per hour—minimum charge ½ hour	2.50
Each photocopy	.25
Certification and validation with seal, each	.50
Certification and validation without seal, each	.25
(ii) Requests pertaining to cases in which the United States is a party and where court rules provide for reproduction of records without cost to the Government.	
Searching per hour or fraction thereof (including overhead costs)	2.50
Processing per hour—minimum charge ½ hour	2.50
Each photocopy	.25
Certification and validation with seal, each	.50
Certification and validation without seal, each	.25
(iii) Furnishing information from Investigative Reports, e.g., automobile collision investigations, safety reports. Searches, overhead, analysis and preparation of report (per hour—minimum charge ½ hour)	2.50
Requests involving—Continued	Fee
(9) General:	
Charges for any additional services not specifically provided above and consistent with the provisions of Part 289 will be made by the respective military department at the following rates:	
Searching per hour or fraction thereof (including overhead costs)	$2.50
Processing per hour—minimum charge ½ hour	2.50
Each photocopy	.25
Certification and validation with seal, each	.50
Certification and validation without seal, each	.25

MAURICE W. ROCHE,
Administrative Secretary.

[F.R. Doc. 62-405; Filed, Jan. 12, 1962; 8:47 a.m.]

PART 289—USER CHARGES AND USER CHARGES REPORT

The Deputy Secretary of Defense approved the following:

Sec.
289.1 Purpose.
289.2 Background.
289.3 Applicability.
289.4 Policies.
289.5 Responsibilities.
289.6 Costs.
289.7 Fees.
289.8 Disposition of collections.
289.9 Legislative proposals.
289.10 Annual report on user charges.

AUTHORITY: §§ 289.1 to 289.10 issued under Title V, Independent Officers Appropriation Act of 1950 (5 U.S.C. 140) as amended.

§ 289.1 Purpose.

This part prescribes Department of Defense policies and procedures for developing an equitable and uniform system of charges for services and/or property which convey special benefits to recipients above and beyond those accruing to the public at large and prescribes the submission of annual reports (Standard Form No. 4) to the Bureau of the Budget as required by BOB Circular No. A-25, dated September 23, 1959, Subject: "User Charges."

§ 289.2 Background.

Title V of the Independent Officers Appropriation Act of 1952 (5 U.S.C. 140), as amended, provides that it is the sense of Congress that fees shall be charged for services rendered by Federal Agencies in order that such services shall be performed on a self-sustaining basis to the fullest extent possible. This Act further provides that the President shall prescribe policies to insure uniform application of this objective within the Executive Branch. The general policies and implementing instructions for the Executive Branch of the Government are prescribed in BOB Circular No. A-25 referred to in § 289.1.

§ 289.3 Applicability.

(a) This part applies to all DoD activities which convey special benefits to recipients above and beyond those accruing to the public at large.

(b) The provisions of this part do not apply in the following areas which are governed by separate policies:

(1) Fringe benefits for military personnel and civilian employees.

(2) Sale or disposal under approved programs of surplus property.

(c) The provisions of this part are not to be construed in such a way as to reduce or eliminate fees and charges presently in effect.

§ 289.4 Policies.

Except for the specific exclusions and exemptions listed in this part, a reasonable charge, as prescribed below, will be made to each identifiable recipient for a measurable unit or amount of Government service or property from which a special benefit is derived.

(a) *Special services.* Where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a charge should be imposed to recover full costs of rendering the service. For example, a special benefit will be considered to accrue and a charge should be imposed when the service rendered:

(1) enables the recipient to obtain more immediate or substantial gain or values (which may or may not be measurable in monetary terms) than those which accrue to the general public, or

(2) is performed at the request of the recipient and is above and beyond the services regularly received by or available to the general public.

(b) *Lease or sale.* Where Federally-owned resources or property are leased or sold, a fair market value should be obtained. So far as practicable and feasible, charges should be based upon costs determined in accordance with comparable commercial practices. However, charges need not be limited to the recovery of costs—they may produce net revenues to the Government.

§ 289.5 Responsibilities.

The Secretaries of the military departments are responsible for initiating, developing, and adopting schedules of fees and charges consistent with the provisions of this part, except when fees or charges are prescribed by other Department of Defense issuances covering specific subject areas. Each military department shall:

(a) Identify each service or activity covered by this part;

(b) Determine the extent of the special benefit provided;

(c) Determine applicable costs;

(d) Establish appropriate charges;

(e) Prepare and submit to the Bureau of the Budget, annual reports as outlined in Appendixes A and B.[1]

[1] Filed as part of original document.

§ 289.6 Costs.

Costs shall be determined or estimated from the best available records. Cost accounting systems will not be established solely for this purpose. Cost determinations shall include both direct and indirect costs, including but not limited to:

(a) Salaries, employee leave, travel expenses, cost of fee collection, postage, materials and supplies used, operation and maintenance of buildings and equipment (including depreciation when appropriate), and personnel costs other than direct salaries (e.g., retirement and employee insurance).

(b) A proportionate share of the management and supervisory costs.

(c) A proportionate share of military pay and allowances, where applicable.

(d) The cost of research, establishing standards and regulations to the extent they are determined to be properly chargeable.

§ 289.7 Fees.

(a) The maximum feet for a special service will be governed by its total cost and not the value of the service to the recipient. If the amount of the fee can be determined in advance, normally it should be collected prior to rendering the service. In establishing new fees and increasing existing fees, exceptions to the policies outlined in this part may be made when:

(1) The cost of collecting the fees would be an unduly large part of the receipts from the activity;

(2) The furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization, or comparable fees are set on a reciprocal basis with a foreign country;

(3) The recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare;

(4) The payment of full fee by a State, local government, or nonprofit group would not be in the interest of the program.

(b) All fees and charges shall be reviewed whenever significant changes in costs occur, and at least once a year, to determine whether a fee should be collected for any additional services rendered.

§ 289.8 Disposition of collections.

Disposition of fees or charges collected as a result of the provisions of this part for services financed by working capital funds shall be made in accordance with regulations governing the use of working capital funds. In all other cases all fees or charges collected should be deposited in the General Fund of the Treasury as Miscellaneous Receipts unless other disposition is specifically authorized by law.

§ 289.9 Legislative proposals.

In cases where collection of fees and charges for services or property is limited or restricted by provisions of existing law, each military department concerned will submit appropriate remedial legislative proposals under applicable legislative procedures.

§ 289.10 Annual report on user charges.

(a) As a result of the annual review specified in § 289.7(b), a report (Standard Form No. 4) covering all changes in fees or charges shall be made and submitted to the Bureau of the Budget by December 31 of each year. Each report will cover the situation as of the preceding June 30 and shall be prepared in accordance with the instructions set forth in Appendixes A and B[1] of this part.

(b) When one military department has the responsibility for the sale or lease of property or equipment belonging to two or more military departments, the military department having the responsibility will report such activity on its "User Charges" report.

MAURICE W. ROCHE,
Administrative Secretary.

[F.R. Doc. 62-406; Filed, Jan 12, 1962; 8:47 a.m.]

Chapter VI—Department of the Navy

SUBCHAPTER D—PROCUREMENT, PROPERTY, PATENTS, AND CONTRACTS

PART 736—DISPOSITION OF PROPERTY

Sale of Personal Property

In § 736.3(a) the list of "Activities Authorized To Sell Contractor Inventory at Private Plants" is amended by revising the 5th item under *"Office and Area"* ("Dallas") to read as follows:

Dallas, 708 Jackson Street, Dallsa, Tex.; 8th Naval District.

(Sec. 5031, 70A Stat. 278 as amended; 10 U.S.C. 5031.)

By direction of the Secretary of the Navy.

[SEAL] W. C. MOTT,
Rear Admiral, U.S. Navy, Judge Advocate General of the Navy.

JANUARY 8, 1962.

[F.R. Doc. 62-398; Filed, Jan. 12, 1962; 8:45 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

St. Jones River, Delaware

Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.237 is hereby amended to include the Delaware State Highway Department bridge across St. Jones River at Barkers Landing, Delaware, effective 30 days after publication in the FEDERAL REGISTER, as follows:

[1] Filed as part of original document.

§ 203.237 St. Jones River, Del.; Delaware State Highway Department bridges at Barkers Landing and at Lebanon.

(a) The owner of or agency controlling these bridges will not be required to keep draw tenders in constant attendance.

(b) Whenever a vessel unable to pass under the closed bridges desires to pass through the draws, at least 24 hours' advance notice of the time opening is required must be given to the authorized representative of the owner of or agency controlling the bridges to insure prompt opening thereof as the time required.

* * * * *

(d) The owner of or agency controlling the bridges shall keep conspicuously posted on both the upstream and downstream sides thereof, in such manner that it can easily be read at any time, a copy of the regulations of this section together with a notice stating exactly how the representative specified in paragraph (b) of this section may be reached.

(e) The operating machinery of the draws shall be maintained in a serviceable condition, and the draws shall be opened and closed at intervals frequent enough to make certain that the machinery is in proper order for satisfactory operation.

[Regs., Dec. 19, 1961, 285/91 (St. Jones River, Del.)—ENGCW-ON]

(Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

J. C. LAMBERT,
Major General; U.S. Army, The Adjutant General.

[F.R. Doc. 62-388; Filed, Jan. 12, 1962; 8:45 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 112—RATES AND CONDITIONS FOR SPECIFIC CLASSES

PART 168—DIRECTORY OF INTERNATIONAL MAIL

Miscellaneous Amendments

The regulations of the Department are amended as follows:

I. In § 112.7 *Small packets,* as published in 26 F.R. 8701-8702, amend paragraph (h) by deleting "South Africa" from the alphabetical list of countries therein not accepting small packets.

NOTE: The corresponding Postal Manual section is 222.78.

II. In § 168.5 *Individual country regulations,* as published in 26 F.R. 8725-8805, make the following changes:

A. In country "Argentina", as amended by 26 F.R. 10771, under Parcel Post, amend the tabular information immediately following the item *Air parcel rates* by striking out "2 Form 2966" where it appears under "Postal forms required", and inserting in lieu thereof "3 Form 2966". Parcel post packages for Argentina must now be accompanied by three customs declarations.

B. In country "Canada", as amended by 26 F.R. 8945, under Postal Union Mail delete the third paragraph under the item *Observations*. Letter packages addressed to the Yukon District are no longer limited to 4 pounds 6 ounces in weight.

C. In country "South Africa" under Postal Union Mail, amend the item *Small packets*, by striking out "Not Accepted" and inserting in lieu thereof "Accepted".

D. In country "United Arab Republic (Egypt)" make the following changes to show that mail addressed to "United Arab Republic (Egypt)" should now be addressed to "United Arab Republic" without the name Egypt. The name United Arab Republic now applies only to the former Egyptian Region.

1. Under Postal Union Mail, amend the item *Observations* by inserting a new paragraph immediately preceding the first paragraph therein to read as follows:

Observations. Mail should be addressed "United Arab Republic", without the name "Egypt".

2. Under Parcel Post make the following changes in the item *Observations*.

a. Insert a new paragraph immediately preceding the first paragraph therein to read as follows:

Parcels should be addressed "United Arab Republic" without the name "Egypt".

b. In the last paragraph strike out "Egypt" where it appears in the first sentence therein and insert in lieu thereof "the United Arab Republic."

E. In country "United Arab Republic (Syria)", make the following changes to show that the Syrian Region of the United Arab Republic is now the Syrian Arab Republic and that mail may be addressed to "Syrian Arab Republic" or "Syria":

1. Amend the country heading to read "Syria" and redesignate the new country heading and the pertinent regulations in the proper alphabetical order of countries therein.

2. Under Postal Union Mail, amend the item *Observations* to read as follows:

Observations. Mail may be addressed "Syrian Arab Republic" or "Syria". The post office of destination should be written in Arabic if possible, as well as in English.

3. Under Parcel Post, strike out the second paragraph of the item *Observations*, and insert in lieu thereof the following:

Parcels may be addressed "Syrian Arab Republic" or "Syria". The post office of destination should be written in Arabic if possible, as well as in English.

III. In "Places Not Included in Alphabetical List of Countries", as amended by 26 F.R. 9857, 11833, make the following changes:

A. Delete the country "Syria (United Arab Republic)" where it appears in alphabetical order therein.

B. Amend the country "British Somaliland (Somaliland Protectorate)" where it appears in alphabetical order therein to read "British Somaliland (Somali Republic)".

(R.S. 161, as amended; 5 U.S.C. 22, 39 U.S.C. 501, 505)

LOUIS J. DOYLE,
General Counsel.

[F.R. Doc. 62-409; Filed, Jan. 12, 1962; 8:47 a.m.]

PART 202—PROCEDURE GOVERNING THE ELIGIBILITY OF PERSONS TO PRACTICE BEFORE THE POST OFFICE DEPARTMENT

PART 204—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE DENIAL, SUSPENSION OR REVOCATION OF SECOND-CLASS MAIL PRIVILEGES

Revised Procedures; Correction

In F.R. Doc. 61-12390, appearing at pages 12771 through 12780 of the issue for Saturday, December 30, 1961, the following corrections are made:

1. On page 12777, the reference in § 202.3 (a) and (b) to "§ 202.2(d)" should read "§ 202.2(c)".

2. On page 12777, the reference in § 202.6(a)(1) to "§ 203.1" should read "§ 202.2".

3. On page 12778, the reference in § 204.8(a) to "§ 204" should read "§ 204.10".

4. On page 12779, the reference in § 204.13(b) to "Subpart A of Part 202 of this chapter" should read "Part 202 of this chapter".

LOUIS J. DOYLE,
General Counsel.

[F.R. Doc. 62-408; Filed, Jan. 12, 1962; 8:47 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 9—Atomic Energy Commission

PART 9-7—CONTRACT CLAUSES

PART 9-15—CONTRACT COST PRINCIPLES AND PROCEDURES

Miscellaneous Amendments

Subpart 9-7.50 is amended as follows:

Section 9-7.5006-12 *Allowable costs and fixed fee (Architect-Engineer Contracts)* is amended by deleting [Reserved] and inserting in lieu thereof the following:

§ 9-7.5006-12 Allowable costs and fixed fee (Architect-Engineer Contracts).

(a) *Compensation for contractor's services.* Payment for the allowable cost as hereinafter defined, and of the fixed fee, if any, as hereinafter provided shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Fixed fee.* The fixed fee payable to the contractor for the performance of the work under this contract is $_____.

NOTE: This provision may appropriately be changed to cover situations where the fee is for a period of time, or different fees are allowed for various phases of the work.

(c) *Allowable cost.* The allowable cost of performing the work under this contract shall be the costs and expenses (less applicable income and other credits) that are actually incurred by the contractor, are applicable and properly chargeable either as directly incident or as allocable through appropriate distribution or apportionment to the performance of the contract work in accordance with its terms and are determined to be allowable pursuant to this paragraph (c). The determination of the allowability of cost hereunder shall be based on: (1) reasonableness, including the exercise of prudent business judgment, (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the contract work and (3) recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost. Allowable cost shall not include cost of any item described as unallowable in paragraph (e) of this clause, except as indicated therein. Failure to mention an item of cost specifically in paragraph (d) or paragraph (e) shall not imply either that it is allowable or that it is unallowable.

NOTE: This paragraph should be deleted and paragraph (c) of § 9-7.5006-9 inserted in lieu thereof for on-site architect-engineer contracts.

(d) *Examples of items of allowable cost.* Subject to the other provisions of this clause, the following examples of items of cost of work under this contract shall be allowable to the extent indicated:

(1) Bonds and insurance (including self-insurance) as provided in the clause entitled "Required Bonds and Insurance."

(2) Communication costs including telephone services, local and long distance telephone calls, telegrams, cablegrams, radiograms, postage and similar items.

(3) Consulting services (including legal and accounting) and related expenses, as approved by the Contracting Officer.

(4) Litigation expenses, including reasonable counsel fees, incurred in accordance with the clause of this contract entitled "Litigation and Claims."

(5) Losses and expenses (including settlements made with the consent of the Contracting Officer) sustained by the contractor in the performance of this contract and certified in writing by the Contracting Officer to be just and reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.

(6) Materials, supplies and equipment, including freight, transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use and disposition thereof, subject to approvals required under other provisions of this contract.

(7) Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the Contracting Officer; and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with the Patent Clause of this contract.

(8) Personnel costs and related expenses incurred in accordance with Appendix A, or amendments thereto, such as:

(i) Salaries and wages; overtime, shift differential, holiday and other premium pay for time worked; non-work time including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, negotiating agreements with the Contractor, or serving on labor-management (contractor) committees; bonuses and incentive compensation, except that when the salaries and wages are directly

chargeable to the contract related bonuses and incentive compensation shall be subject to approval by the Contracting Officer;

(ii) Legally required contributions to old age and survivors' insurance, unemployment compensation plans and workmen's compensation plans (whether or not covered by insurance); voluntary or agreed upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

(iii) Travel (except foreign travel which requires specific approval by the Contracting Officer on a case by case basis); incidental subsistence and other allowances of contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);

(iv) Employee relations, welfare, morale, etc., programs, including incentive or suggestion awards, employee counseling services, health or first-aid clinics and house or employee publications;

(v) Personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case by case basis) including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills and to develop scientific and technical personnel in specialized fields required in the contract work; and

(vi) Recruitment of personnel (including help-wanted advertisement) including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews.

Appendix A may be modified from time to time, in writing, without execution of an amendment to this contract for the purposes of effecting any changes in or additions to Appendix A as may be agreed upon by the parties.

NOTE: In appropriate circumstances, the lead sentence may be changed to read as follows:

"Personnel costs and related expenses incurred in accordance with the contractor's established personnel policies and programs applicable on a company-wide basis throughout the contractor's private operations, by collective bargaining contracts, or by custom in the industry or area, as approved by the Contracting Officer such as:"

Also delete last paragraph of text which refers to modifying Appendix A.

(9) Rentals and leases of land, buildings and equipment owned by third parties where such items are used in the performance of the contract, except that such rentals and leases when directly chargeable to the contract shall be subject to approval by the Contracting Officer.

(10) Repairs, maintenance, inspection, replacement and disposal of Government-owned property to the extent directed or approved by the Contracting Officer.

(11) Repairs, maintenance and inspection of contractor-owned property used in connection with the performance of this contract including reasonable standby facilities which are due to ordinary wear and tear from use and the action of the elements provided such maintenance and repairs keep the property in efficient operating condition and do not add to its permanent value or appreciably prolong its intended useful life; and major repairs (including replacement) to such property, except that such major repairs when directly chargeable to the contract shall be subject to approval by the Contracting Officer.

(12) Reproduction and art work, including such models and mock-ups as may be approved by the Contracting Officer.

(13) Structures and facilities of a temporary nature as approved by the Contracting Officer.

(14) Membership in trade, business and professional organizations, except that such memberships when directly chargeable to the contract shall be subject to approval by the Contracting Officer.

(15) Subcontracts, purchase orders and purchases from contractor controlled sources, subject to approvals required by other provisions of this contract.

(16) Subscriptions to trade, business, technical, and professional periodicals, except that such subscriptions when directly chargeable to the contract shall be subject to approval by the Contracting Officer.

(17) Taxes, fees and charges levied by public agencies which the contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.

(18) Utility services including electricity, gas, water, steam and sewerage.

(19) The costs of preparing proposals to the extent approved by the Contracting Officer, but not to exceed 1% of the direct material and direct labor costs of the contract work.

NOTE: This paragraph should be deleted for on-site architect-engineer contracts.

(e) *Examples of items of unallowable costs.* The following examples of items of costs are unallowable under this contract to the extent indicated:

(1) Advertising, except (i) help-wanted advertising, and (ii) other advertising (such as costs of participation in exhibits) approved by the Contracting Officer as clearly in furtherance of work performed under the contract.

(2) Bad debts (including expenses of collection) and provisions for bad debts not arising out of the performance of this contract.

(3) Bonuses and similar compensation under any other name, which (i) are not pursuant to an agreement between the contractor and employee prior to the rendering of the services or an established plan consistently followed by the contractor, (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.

(4) Commissions, bonuses and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto.

(5) Contingency reserves, provisions for (except provisions for reserves under a self-insurance program to the extent that the type, coverage, rates and premiums would be allowable if commercial insurance were purchased to cover the same risk, as approved by the Contracting Officer).

(6) Contributions and donations.

(7) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Service under the Internal Revenue Code of 1954, as amended, including the straight-line, declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight-line method) or sum-of-the-years-digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life. Amortization or depreciation of unrealized appreciation of values of assets or of assets fully amortized or depreciated on the contractor's books of account is unallowable.

(8) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profits.

(9) Entertainment costs, except the costs of such recreational activities for on-site employees as may be approved by the Contracting Officer or provided for elsewhere in this contract.

(10) Fines and penalties, including assessed interest, resulting from violations of, or failure of the contractor to comply with Federal, State, or local laws, or regulations, except when incurred in accordance with written approval of the Contracting Officer or as a result of compliance with the provisions of this contract.

(11) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of the Commission applicable to transfers of such property to the contractor from others.

(12) Insurance (including any provision of a self-insurance reserve) on any person where the contractor under the insurance policy is the beneficiary directly or indirectly, and insurance against loss of or damage to Government property as defined in Clause _____.

(13) Interest, however represented, except interest incurred in compliance with clause entitled "State and Local Taxes," bond discounts and expenses, and costs of financing and refinancing operations.

(14) Legal, accounting, and consulting services, and related costs incurred in connection with the preparation of prospectuses, preparation and issuance of stock rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions or proposed actions of the United States, and prosecution or defense of patent-infringement litigation.

(15) Losses (including litigation expenses, counsel fees, and settlements) on, or arising from the sale, exchange, or abandonment of capital assets, including investments; losses on other contracts, including the contractor's contributed portion under cost-sharing contracts; losses in connection with price reduction to and discount purchases by employees and others from any source; and losses where such losses or expenses:

(i) Are compensated for by insurance or otherwise, or which would have been compensated by insurance required by law or by written direction of the Contracting Officer but which the contractor failed to procure or maintain through its own fault or negligence, or which could have been covered by permissible insurance in keeping with ordinary business practice but which the contractor failed to secure or maintain;

(ii) Result from wilful misconduct or lack of good faith on the part of any of the contractor's directors, corporate officers, or a supervising representative of the contractor, as defined in Clause _____ of this contract;

(iii) Represent liabilities to third persons for which the contractor has expressly accepted responsibility under other terms of this contract.

(16) Precontract costs, except as expressly made allowable under other provisions in this contract.

(17) Reconversion, alteration, restoration, or rehabilitation of the contractor's facilities, except as expressly provided elsewhere in this contract.

(18) Research and development costs, unless specifically provided for elsewhere in this contract.

(19) Selling and distribution activities and related expenses not applicable to the performance of this contract.

(20) Storage of records pertaining to this contract after completion of operations under this contract irrespective of contractual or statutory requirement of the preservation of records.

(21) Taxes, fees and charges in connection with financing, refinancing, or refunding operations, including the listing of securities on exchanges; taxes which are paid contrary to the clause entitled "State and Local Taxes;" Federal taxes on net income and excess profits; and special assessments on land which represent capital improvement.

NOTE: The following additional examples of items of unallowable costs are to be used in on-site architect-engineer contracts:

(22) Costs of preparing proposals.

(23) Central and branch office expenses of the contractor, except as specifically set forth in the contract.

(24) Travel expenses of officers, partners, proprietors, executives, administrative heads and other employees of the contractor's central office or branch office organization concerned with the general management, supervision and conduct of the contractor's business as a whole, except to the extent that particular travel is in connection with the contract and approved by the Contracting Officer.

Subpart 9–15.50 is amended as follows:

§ 9–15.5001 [Amendment]

Section 9–15.5001 *Definitions,* is amended by adding the following to paragraph (e):

(1) "Off-site architect-engineer contract" is a contract where the design work is performed in the contractor's central or branch office.

(2) "On-site architect-engineer contract" is a contract where relatively complete staffing is required for the design work at an office other than a central or branch office of the contractor, and where a minimum of support is required from the contractor's central or branch office staff. The office where the design work is performed may be at the construction site or any other location.

Section 9–15.5002 is deleted and the following is inserted in lieu thereof:

§ 9–15.5002 Responsibilities.

(a) The Controller is responsible for developing and revising the policy and procedures for the determination of allowable costs, and for seeing that they are properly coordinated with the General Counsel, the Division of Contracts, and with other Divisions and Offices having joint interests.

(b) Directors of Headquarters Divisions and Offices negotiating contracts, and Managers of Field Offices are responsible for following the policy, principles and standards set forth herein in establishing the compensation provisions of contracts and subcontracts and for submission of deviations for Headquarters consideration.

(c) The General Counsel is responsible for the preparation and interpretation of contracts.

Section 9–15.5003 is deleted and the following is inserted in lieu thereof:

§ 9–15.5003 Deviation.

Deviations from the policy and principles set forth in this subpart shall not be made unless such action is authorized by the Headquarters Division Director concerned, after consultation with the Controller, General Counsel, and the Director, Division of Contracts, on the basis of a written justification stating clearly the special circumstances involved. Where appropriate, any approved deviation shall be reflected in the compensation provisions of the contract.

Section 9–15.5005–2 is deleted and the following is inserted in lieu thereof:

§ 9–15.5005–2 Compensation through fee.

(a) AEC compensates operating, construction and on-site architect-engineer contractors through the fixed fee for general and administrative expenses incurred in the general management and administration of the contractor's business as a whole by the contractor's home, divisional or branch offices.

(b) AEC generally compensates construction contractors through the fixed fee for the salary (and associated payroll costs, taxes, etc., related to such salary) of the contractor's responsible supervising representative in charge of the contract work. Accordingly, the salary of the supervising representative is generally not reimbursable as an allowable cost under construction contracts.

(c) In a particular case, the contractor may be compensated on the basis of allowable cost, rather than through the fixed fee for some or all of the expenses described in paragraphs (a) and (b) of this section if the appropriate Headquarters Division Director, the Manager of the Field Office, or a representative having the authority to approve the contract, authorizes use of this alternative approach and determines that the negotiated fixed fee reflects proper downward adjustment from that which would otherwise have been established. In the case of no-fee contracts (including contracts providing for nominal or token fees) these categories of expenses may be either reimbursed on the basis of actual costs or compensated through a predetermined fixed amount.

(d) The above-stated policy does not preclude the payment of expenses merely because they are incurred or accounted for at or by the contractor's home, divisional or branch offices; where expenses of a type typically incurred at construction or operation sites in support of the contract work, are, by reason of a particular contractor's greater centralization, incurred at such offices, rather than at the operation site, such expenses may be reimbursed.

(e) In the case of on-site architect-engineer contracts, the Contracting Officer may approve performance of some of the work in the contractor's central or branch office location. The direct costs of such work and an equitable portion of such indirect costs at the central office or branch office location as are properly applicable and apportionable to such work are allowable. In such cases, the indirect costs attributable to the performance at a central office or branch office location of work related directly and solely to individual contracts shall be distinguished with care from general and administrative expenses incurred by the contractor's home or branch offices in the general management, supervision, and conduct of its business, since these general administrative expenses are usually compensated for through fee and, in any event, where allowable, are related to and apportionable over all work under the supervision of the office concerned.

(f) As to work performed by an operating contractor in its own facilities, see § 9–15.5007–3.

§ 9–15.5005–3 [Amendment]

Section 9–15.5005–3 is amended by deleting the note at the end thereof and inserting in lieu thereof the following:

NOTE: For examples of allowable and unallowable costs see §§ 9–7.5006–9 through 9–7.5006–12.

§ 9–15.5005–4 [Amendment]

Section 9–15.5005–4 is amended by deleting paragraph (b) and inserting the following in lieu thereof:

(b) *Audit by other Federal agencies.* Where the amount of cost-type work to be performed for AEC in a particular facility is less than that being performed at the same facility for other Federal agencies, arrangements may be made to have the cognizant agency perform the audit of the AEC contract or subcontract. These arrangements shall be made administratively between AEC and the other agency involved, and wherever possible shall provide for the cognizant agency to audit against the AEC cost principles. In no case, however, shall the arrangements preclude determination by the AEC contracting officer of the allowable and unallowable costs in accordance with AEC cost principles set forth in §§ 9–7.5006–9 through 9–7.5006–12. Steps appropriate in the light of the magnitude and nature of the costs shall be taken by the contracting officer to ascertain that the audit results properly reflect the application of AEC cost principles (particularly as to types and amounts of items of cost including incidence, allocability, and equitable distribution thereof).

§ 9–15.5007–2 [Amendment]

Section 9–15.5007–2 is amended by deleting paragraph (a) and inserting the following in lieu thereof:

(a) The contractor's indirect costs, which must be appropriately identified and supported by adequate documentation, must be carefully examined with the objective of excluding for reimbursement purposes all types of indirect costs that are either unallowable in nature (see list of examples in Standard Cost Articles §§ 9–7.5006–9 through 9–7.5006–12) or not properly allocable to performance of work under the AEC contract. It may be that only a portion of a given pool of indirect costs will fail to meet these tests and require such exclusion. After excluding all such expenses, the remaining indirect costs require allocation by an acceptable method or methods that result in equitable charges to the AEC contract. Any item or items of indirect cost that are so excluded in whole or in part shall include an amount for absorption of their appropriate share of other related indirect and administrative expenses. Some examples of indirect costs that should include a fair share of other indirect and administrative expenses are: research and development costs, selling expenses, and bidding and proposal costs.

Section 9–15.5007–3 is deleted and the following is inserted in lieu thereof:

§ 9–15.5007–3 Company general and administrative expenses.

Although the AEC generally compensates operating, construction and on-site architect-engineer contractors through fee for company general and administrative expenses (see § 9–15.5005–2), it allows such company general and administrative expenses under off-site architect-engineer, supply, and research contracts with commercial contractors performing the work in their own facilities. Contractor's general and administrative expenses may, however, be included for reimbursement under AEC off-site architect-engineer, supply, and research contracts only to the extent that they are established, after careful examination, to be allowable in nature and properly allocable to the work. Work performed in a contractor's own facilities under an operating or construction contract may likewise be allowed to bear the properly allocable portion of allowable company general and administrative expense.

Section 9–15.5008–2 is deleted and the following is inserted in lieu thereof:

§ 9–15.5008–2 Cost data.

Where the use of cost data is required by § 9–15.5008–1, the cost principles outlined in this subpart including the items listed as unallowable costs in the Standard Cost Articles §§ 9–7.5006–9 through 9–7.5006–12 shall be applicable in the accounting reviews of contractor's proposals for pricing and in the preparation of the advisory accounting reports which are to be used as a guide by the Contracting Officer in negotiating the final price. An exception to this is the treatment of contingency reserves or allowances in connection with estimates of future costs. If contingencies are known to exist in such cases and the effects may be gauged within reasonable limits (such as anticipated costs of defective work), consideration thereof may be included in the estimates. Where conditions are known that may give rise to a contingency but the effects cannot be reasonably estimated (such as general business risks), the contingency should not be included as a cost factor but should be disclosed as a separate item for the consideration of the Contracting Officer.

§ 9–15.5009–5 [Amendment]

Section 9–15.5009–5 is amended by deleting the first two sentences of paragraph (a) and inserting in lieu thereof the following:

(a) *Allowability.* As indicated in § 9–15.5005–3, a contractor's general and administrative expenses may be accepted for apportionment to work under an AEC off-site architect-engineer, supply, or research contract only to the extent that they are established, after careful examination, to be allowable in nature and, on the basis of incidence to its performance, properly allocable to the work. The following are a few examples of expenses which, although not unallowable because of their basic nature, are not incident to the performance of an AEC contract:

§ 9–15.5010–14 [Amendment]

Section 9–15.5010–14 is amended by deleting paragraph (c) and inserting in lieu thereof:

(c) Bonuses and incentive compensation paid to employees other than those whose pay is directly reimbursed will not be allowed in on-site architect-engineer, construction, and operating contracts where home office general and administrative expense is unallowable.

Section 9–15.5010–14 is amended by deleting paragraph (j) and inserting in lieu thereof:

(j) *Training and education expenses.* See §§ 9–7.5006–9(d)(8)(v), 9–7.5006–10(d)(8)(v), and 9–7.5006–12(d)(8)(v).

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201; sec. 205, 63 Stat. 390; 40 U.S.C. 486)

Effective date: These regulations are effective upon publication in the FEDERAL REGISTER.

Dated at Germantown, Md., this 4th day of January 1962.

For the Atomic Energy Commission.

A. R. LUEDECKE,
General Manager.

[F.R. Doc. 62–389; Filed, Jan. 12, 1962; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 26]

GRAIN SORGHUM

Official Grain Standards of the United States; Notice of Proposed Rule Making

Pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 1003), notice is hereby given that the United States Department of Agriculture has under consideration a proposed revision of the Official Grain Standards of the United States for Grain Sorghum (7 CFR 26.551 et seq.), promulgated under the authority of the United States Grain Standards Act, 39 Stat. 482, as amended (7 U.S.C. 71 et seq.).

Since the last revision of the Official Grain Standards of the United States for Grain Sorghum, effective July 1, 1935, there have been changes in the character of the grain sorghum crop due to the adoption of new varieties and the mechanization of the methods of harvesting the crop. The test weight per bushel of the varieties now grown is higher than that of the varieties grown 20 or 25 years ago. It has also been found that the varieties now grown are not true durra, milo, or kafir types but are crosses and therefore it is proposed that the subclasses associated with these types be eliminated. For the same reason it is proposed to eliminate the class Red grain sorghums. The change in methods of harvesting has to a large extent eliminated dockage in grain sorghum. It is therefore proposed that dockage as such be eliminated and that special limits for fine foreign material be included under the grading factor designated as foreign material. As an alternative to this proposal, dockage as applied at present is also proposed. In addition it is proposed to lower the moisture requirements in grades No. 1, No. 2, and No. 3, to provide for better keeping quality for the grain in these grades and an alternative proposal providing for a special grade "Tough" in lieu of specific moisture limits as numerical grading factors is also offered for consideration. It is further proposed that nongrain sorghum be eliminated as a grading factor since it is now seldom a grade determining factor. In addition, other minor changes are offered for consideration.

Accordingly, it is proposed that consideration be given to revising the Official Grain Standards of the United States for Grain Sorghum to read as follows:

§ 26.551 Terms defined.

For the purposes of the official grain standards of the United States for grain sorghum (Sorghum vulgare):

(a) *Grain sorghum.* Grain sorghum shall be any grain which consists of 50 percent or more of whole kernels of grain sorghum, which contains not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act, and which, after the removal of foreign material, contains not more than 10.0 percent of nongrain sorghum.

(b) *Classes.* Grain sorghum shall be divided into the following four classes: Yellow Grain Sorghum, White Grain Sorghum, Brown Grain Sorghum, and Mixed Grain Sorghum.

(1) *Yellow Grain Sorghum.* The class Yellow Grain Sorghum shall be grain sorghum with yellow, salmon-pink, or red seedcoats, which contains not more than 10.0 percent of grain sorghum of other colors.

(2) *White Grain Sorghum.* The class White Grain Sorghum shall be grain sorghum with white seed coats, which contains not more than 10.0 percent of grain sorghum of other colors. Colored spots upon kernels of grain sorghum otherwise white shall not affect their classification as White Grain Sorghum. Grain Sorghum with white seedcoats and brown subcoats shall not be classed as White Grain Sorghum.

(3) *Brown Grain Sorghum.* The class Brown Grain Sorghum shall be grain sorghum with brown seedcoats, which contains not more than 10.0 percent of grain sorghum of other colors. Grain sorghum with white seedcoats and brown subcoats shall be classed as Brown Grain Sorghum (see paragraph (b) (2) of this section).

(4) *Mixed Grain Sorghum.* The class Mixed Grain Sorghum shall be grain sorghum which does not meet the requirements for the class Yellow Grain Sorghum, White Grain Sorghum, or Brown Grain Sorghum.

(c) *Grades.* Grades shall be the numerical grades, Sample grade, and special grades provided for in section 26.553.

(d) *Foreign material (total).* Foreign material (total) shall be all matter including kernels and pieces of kernels of grain sorghum which will pass readily through a 5/64 triangular hole sieve and all matter other than grain sorghum which remains on the sieve after sieving.

(e) *Fine foreign material.* Fine foreign material shall be foreign material which will pass readily through a 2½/64 round hole sieve.

(f) *Other grains.* Other grains shall be barley, hull-less barley, corn, flaxseed, oats, rye, soybeans, wheat, cultivated buckwheat, einkorn, emmer, Polish wheat, popcorn, poulard wheat, rice, spelt, sweet corn, and wild oats.

(g) *Nongrain sorghum.* Nongrain sorghum shall be the seeds of sweet sorghum (sorgo), sorghum-sudan hybrids, sorgrass, broomcorn, Johnson grass, and Sudan grass.

(h) *Damaged kernels (total).* Damaged kernels (total) shall be kernels and pieces of kernels of grain sorghum, nongrain sorghum, and other grains which are heat damaged, sprouted, frosted, badly ground-damaged, badly weather-damaged, moldy, diseased, or otherwise materially damaged.

(i) *Heat-damaged kernels.* Heat-damaged kernels shall be kernels and pieces of kernels of grain sorghum, nongrain sorghum, and other grains which are materially discolored and damaged by heat.

(j) *Stones.* Stones shall be concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(k) *5/64 triangular hole sieve.* A 5/64 triangular hole sieve shall be an aluminum sieve 0.0319 inch thick with equilateral triangular perforations, the inscribed circles of which are 0.0781 (5/64) inch in diameter and which are ¼ inch from center to center. The perforations of each row shall be staggered in relation to the adjacent row.

(l) *2½/64 round hole sieve.* A 2½/64 round hole sieve shall be an aluminum sieve 0.0319 inch thick perforated with round holes 0.0391 (2½/64) inch in diameter which are 0.075 inch from center to center. The perforations of each row shall be staggered in relation to the adjacent row.

§ 26.552 Principles governing application of standards.

The following principles shall apply in the determination of the classes and grades of grain sorghum:

(a) *Basis of determination.* Each determination of class, damaged kernels, heat-damaged kernels, nongrain sorghum, and stones shall be on the basis of the grain when free from that part of the "foreign material" which can be removed readily by the use of a 5/64 triangular hole sieve. All other determinations shall be upon the basis of the grain as a whole.

(b) *Percentages.* Percentages shall be upon the basis of weight.

(c) *Moisture.* Moisture shall be ascertained by the air-oven method for grain sorghum prescribed by the United States Department of Agriculture as described in Service and Regulatory Announcements No. 147 (1959 revision), issued by the Agricultural Marketing Service, or ascertained by any method which gives equivalent results.

(d) *Test weight per bushel.* Test weight per bushel shall be the weight per Winchester bushel, as determined by the method prescribed by the United States Department of Agriculture as described in Circular 921, issued June 1953, or as determined by any method which gives equivalent results.

§ 26.553 Grades, grade requirements and grade designations.

The following grades, grade requirements, and grade designations are applicable under these standards:

(a) *Grades and grade requirements for the classes Yellow Grain Sorghum, White Grain Sorghum, Brown Grain*

Sorghum, and Mixed Grain Sorghum. (See also paragraph (c) of this section.)

Grade	Minimum test weight per bushel	Maximum limits of—				
		Moisture	Damaged kernels		Foreign material	
			Total	Heat-damaged kernels	Total	Fine foreign material
	Pounds	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
1	58	13.0	2.0	0.2	3.0	0.5
2	56	14.0	5.0	.3	6.0	1.0
3[1]	54	15.0	10.0	1.0	9.0	1.5
4	51	18.0	15.0	3.0	12.0	2.0

Sample grade: Sample grade shall be grain sorghum which does not meet the requirements of any of the grades from No. 1 to No. 4, inclusive; or which contains stones; or which is musty, or sour, or heating; or which is badly weathered; or which has any commercially objectionable foreign odor except of smut; or which is otherwise of distinctly low quality.

[1] Grain sorghum which is distinctly discolored shall not be graded higher than No. 3.

(b) *Grade designation for all classes of grain sorghum.* The grade designation for grain sorghum shall include, in the order named, the number of the grade or the words "Sample grade," as the case may be; the name of the class; and the name of each applicable special grade. In the case of the class Mixed Grain Sorghum, the grade designation shall also include, following the name of the class, the approximate percentages of yellow grain sorghum, white grain sorghum, and brown grain sorghum, if any, in the mixture.

(c) *Special grades, special grade requirements, and special grade designations for grain sorghum*—(1) *Smutty grain sorghum*—(i) *Requirements.* Smutty grain sorghum shall be grain sorghum the kernels of which are covered with smut spores, or which contains 20 or more smut masses in 100 grams of grain sorghum.

(ii) *Grade designation.* Smutty grain sorghum shall be graded and designated according to the grade requirements of the standards applicable to such grain sorghum if it were not smutty, and there shall be added to and made a part of the grade designation the word "Smutty."

(2) *Weevily grain sorghum*—(i) *Requirements.* Weevily grain sorghum shall be grain sorghum which is infested with live weevils or other live insects injurious to stored grain.

(ii) *Grade designation.* Weevily grain sorghum shall be graded and designated according to the grade requirements of the standards applicable to such grain sorghum if it were not weevily, and there shall be added to and made a part of the grade designation the word "Weevily."

The following alternative proposals will be given consideration:

A. Eliminate fine foreign material as a grading factor and provide that all material which will pass readily through a 2½/64 round hole sieve shall be considered as dockage.

This proposal requires the following changes in the several sections of the original proposal.

1. Substitute the following paragraphs, respectively, for paragraphs (a), (d), and (e) in § 26.551, as set out above:

(a) *Grain sorghum.* Grain sorghum shall be any grain which, before the removal of dockage, consists of 50 percent or more of whole kernels of grain sorghum, which contains not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act, and which after the removal of the dockage and foreign material, contains not more than 10.0 percent of nongrain sorghum.

* * * * *

(d) *Dockage.* Dockage shall be sand, dirt, finely broken kernels of grain sorghum, weed seeds, and any other material which will pass readily through a 2½/64 round hole sieve (see also paragraph (b) of § 26.552 and paragraph (b) of § 26.553).

(e) *Foreign material.* Foreign material shall be all matter including kernels and pieces of kernels of grain sorghum, except dockage, which will pass readily through a 5/64 triangular hole sieve and all matter other than grain sorghum which remains on the sieve after sieving.

2. Substitute the following paragraph for paragraphs (a) and (b) in § 26.552, as set out above:

(a) *Basis of determinations.* Each determination of foreign material shall be on the basis of the grain when free from dockage. Each determination of class, damaged kernels, heat-damaged kernels, nongrain sorghum, and stones shall be made upon the basis of the grain when free from dockage and that part of the foreign material which can be removed readily by the use of a 5/64 triangular hole sieve. All other determinations shall be upon the basis of the grain as a whole.

(b) *Percentages.* Percentages shall be upon the basis of weight. The percentage of dockage when equal to 1 percent or more shall be stated in terms of whole percent and when less than 1 percent shall not be stated. A fraction of a percent shall be disregarded.

3. Substitute the following paragraph for paragraphs (a) and (b) in § 26.553:

(a) *Grades and grade requirements for the classes of Yellow Grain Sorghum, White Grain Sorghum, Brown Grain Sorghum, and Mixed Grain Sorghum* (see also paragraph (c) of this section).

Grade	Minimum test weight per bushel	Maximum limits of—			
		Moisture	Damaged kernels		Foreign material
			Total	Heat-damaged kernels	
	Pounds	*Percent*	*Percent*	*Percent*	*Percent*
1	58	13.0	2.0	0.2	3.0
2	56	14.0	5.0	.5	6.0
3[1]	54	15.0	10.0	1.0	9.0
4	51	18.0	15.0	3.0	12.0

Sample grade: Sample grade shall be grain sorghum which does not meet the requirements of any of the grades from No. 1 to No. 4, inclusive; or which contains stones; or which is musty, or sour, or heating; or which is badly weathered; or which has any commercially objectionable foreign odor except of smut; or which is otherwise of distinctly low quality.

[1] Grain sorghum which is distinctly discolored shall not be graded higher than No. 3.

(b) *Grade designation for all classes of grain sorghum.* The grade designation for grain sorghum shall include, in the order named, the number of the grade or the words "Sample grade," as the case may be; the name of the class; the name of each applicable special grade, and when applicable the word "Dockage" together with the percentage thereof. In the case of the class Mixed Grain Sorghum the grade designation shall also include, following the name of the class, the approximate percentages of yellow grain sorghum, white grain sorghum, and brown grain sorghum, if any, in the mixture.

B. Eliminate moisture as a numerical grading factor in the table of grade requirements and substitute a special grade for tough grain sorghum.

This proposal would require the following changes in § 26.553 of the original proposal:

1. Substitute the following paragraph for paragraph (a) of § 26.553, as set out above:

(a) *Grades and grade requirements for the classes Yellow Grain Sorghum, White Grain Sorghum, Brown Grain Sorghum, and Mixed Grain Sorghum* (see also paragraph (c) of this section).

Grade	Minimum test weight per bushel	Maximum limits of—			
		Damaged kernels		Foreign material	
		Total	Heat-damaged kernels	Total	Fine foreign material
	Pounds	*Percent*	*Percent*	*Percent*	*Percent*
1	58	2.0	0.2	3.0	0.5
2	56	5.0	.5	6.0	1.0
3[1]	54	10.0	1.0	9.0	1.5
4	51	15.0	3.0	12.0	2.0

Sample grade: Sample grade shall be grain sorghum which does not meet the requirements of any of the grades from No. 1 to No. 4, inclusive; or which contains more than 18.0 percent of moisture; or which is musty, or sour, or heating; or which is badly weathered; or which has any commercially objectionable foreign odor except of smut; or which is otherwise of distinctly low quality.

[1] Grain sorghum which is distinctly discolored shall not be graded higher than No. 3.

1. Add a new subparagraph (3) to paragraph (c) of § 26.553, as set out above, to read as follows:

(3) *Tough grain sorghum*—(i) *Requirements.* Tough grain sorghum shall be grain sorghum which contains more than 13.0 but not more than 18.0 percent of moisture.

(ii) *Grade designation.* Tough grain sorghum shall be graded and designated according to the grade requirements of the standards applicable to such grain sorghum if it were not tough, and there shall be added to and made a part of the grade designation, the word "Tough."

The United States Grain Standards Act requires that public notice be given of the revision of standards adopted under its provisions not less than 90 days in advance of the effective date of such revision. If revised standards for grain sorghum are promulgated, they should be made effective on or about June 15, 1962.

Pursuant to the provisions of section 4 of the Administrative Procedure Act (5 U.S.C. 1003), informal public hearings will be held as follows:

Lubbock, Texas, beginning at 1:30 p.m., on January 29, 1962, in the MacKenzie Terrace, 407 East Broadway.

Kansas City, Missouri, beginning at 9:30 a.m., on January 31, 1962, in the Georgian Room of the Continental Hotel.

Written data, views, or arguments may also be submitted to the Director, Grain Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., to be received by him not later than February 15, 1962. Consideration will be given to all information obtained at the hearing, to written data, views, and arguments received by the Director not later than February 15, 1962, and to other information available in the United States Department of Agriculture before a decision is made as to what revisions, if any, shall be promulgated.

Lawrence Zeleny, Grain Division, Agricultural Marketing Service, is hereby designated to conduct the hearings. In case this designee is unable to conduct the hearings, any other officer of the Department designated by the Director, Grain Division, Agricultural Marketing Service, is hereby authorized to conduct such hearings.

Done at Washington, D.C., this 9th day of January 1962.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 62-368; Filed, Jan. 12, 1962; 8:46 a.m.]

[7 CFR Part 959]

[AO-322-A1]

ONIONS GROWN IN SOUTH TEXAS

Extension of Time for Filing Exceptions to Recommended Decision on Proposed Amendments to Marketing Agreement and Order

The time within which interested parties may file exceptions to the recommended decision (27 F.R. 108) of the Assistant Secretary, United States Department of Agriculture, with respect to the proposed amendments to the marketing agreement and order regulating the handling of onions grown in South Texas is hereby extended to not later than the close of business on January 19, 1962.

Dated: January 11, 1962.

JOHN P. DUNCAN, Jr.,
Assistant Secretary.

[F.R. Doc. 62-463; Filed, Jan. 12, 1962; 9:01 a.m.]

[7 CFR Part 993]

HANDLING OF DRIED PRUNES PRODUCED IN CALIFORNIA

Amendment of the Administrative Rules and Regulations To Provide for Establishment of Independent Producer Districts; Notice of Proposed Rule Making

Notice is hereby given that there is under consideration an amendment of the Subpart—Administrative Rules and Regulations, operative pursuant to Marketing Agreement No. 110, as amended, and Order No. 93, as amended (7 CFR Part 993; 26 F.R. 475), regulating the handling of dried prunes produced in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

The proposed amendment was recommended by the Prune Administrative Committee and would establish seven independent producer districts so that such districts would have, insofar as practicable, equal representation by numbers of independent producers and production of dried prunes by such producers, as required by § 993.28. The description of each of the seven districts would be included in paragraph (a) of § 993.128. This paragraph was reserved for such purpose by action of August 29, 1961 (26 F.R. 8277), promulgating the Administrative Rules and Regulations under the amended program.

Consideration will be given to any written data, views, or arguments pertaining to the proposals which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., and received not later than the close of business on the tenth day after publication of this notice in the FEDERAL REGISTER.

The proposal is as follows:

§ 993.128 Nominations for membership.

(a) *Districts.* In accordance with the provisions of § 993.28, the districts referred to therein are described as follows:

District No. 1. The counties of Modoc, Lassen, Plumas, Sierra, Butte, Sutter, Yuba, Nevada, and Placer.

District No. 2. The counties of Marin, Napa, Lake, Mendocino, Humboldt, Del Norte, and that portion of Sonoma County south and east of a line described as follows: Beginning at the intersection of Bay Highway and Bodega Bay in Bodega Bay; thence easterly on Bay Highway to its junction with Bodega Highway in Bodega; thence easterly on Bodega Highway to its junction with Burbank Memorial Highway in Sebastopol; thence easterly on Burbank Memorial Highway to its junction with Sebastopol Avenue at Occidental Road; then east on Sebastopol Avenue to U.S. Highway 101 Freeway in Santa Rosa; thence north on U.S. Highway 101 Freeway to its junction with Redwood Highway North (U.S. Highway 101) at Mendocino Avenue; thence northwest on Redwood Highway North (U.S. Highway 101) to Pleasant Road near East Windsor; thence east on Pleasant Road to Chalk Hill Road; thence northerly on Chalk Hill Road to its junction with State Highway 128; thence easterly on State Highway 128 to the Napa County line.

District No. 3. All of that portion of Sonoma County not included in District No. 2.

District No. 4. The counties of Alameda, San Francisco, San Mateo, Santa Cruz, and all that portion of Santa Clara County north and west of a line described as follows: Beginning at the point where the eastern Santa Clara County line and the southern boundary of San Jose Township of said county meet; thence west on said township boundary to San Felipe Road No. 2; thence southerly on San Felipe Road No. 2 to San Felipe Road; thence westerly and northwesterly on San Felipe Road to White Road in Evergreen; thence northwest on White Road to Santa Clara Street in San Jose; thence west on Santa Clara Street to First Street in San Jose; thence south on First Street to San Carlos Street in San Jose; thence west on San Carlos Street to Meridian Road in San Jose; thence south on Meridian Road to Dry Creek Road; thence westerly on Dry Creek Road to the San Jose-Los Gatos Road; thence southwesterly on the San Jose-Los Gatos Road to Union Avenue; thence south on Union Avenue along a straight line continuing to the Santa Cruz County line.

District No. 5. That part of Santa Clara County east and south of District No. 4, extending in a southerly direction to a straight line extending from along the main portion of the Cochran Road, northeasterly to the Stanislaus County line and southwesterly to the Santa Cruz County line.

District No. 6. The counties of San Benito, Monterey, and San Luis Obispo, and all of that portion of Santa Clara County not included in Districts No. 4 and No. 5.

District No. 7. All of the counties in the State of California not included in Districts No. 1 to No. 6, inclusive.

Dated: January 10, 1962.

PAUL A. NICHOLSON,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 62-428; Filed, Jan. 12, 1962; 8:49 a.m.]

Agricultural Research Service

[9 CFR Part 92]

IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS

Miscellaneous Amendments

On December 28, 1961, there was published in the FEDERAL REGISTER (26 F.R. 12579) a notice of proposed amendments of Part 92, Code of Federal Regulations, governing the importation of certain animals and poultry and certain animal and poultry products. After further consideration of the matter it is now proposed that certain further changes be made in §§ 92.19, 92.27, and 92.31 as specified below:

1. Paragraph (a) of § 92.19 would be amended to read as follows:

(a) For ruminants, swine, horses, poultry, and animal semen intended for importation from Canada, the importer shall first apply for and obtain from the Division an import permit as provided in § 92.4: *Provided,* That an import permit is not required for horses or poultry offered for entry at a land border port designated in § 92.3(b) of this part; and *Provided further,* That an import permit is not required for a ruminant or swine offered for entry at a land border port designated in § 92.3(b) of this part if such animal: (1) Was born in Canada or the United States, and (2) has been in no country other than Canada or the United States, and (3) has not, during the preceding 60 days, been corralled, pastured, or held with, or bred by, or inseminated with semen from, any ruminants or swine for which a permit would be required under this part, and (4) is not pregnant as a result of having been bred by, or artificially inseminated with semen from, a ruminant or swine

for which a permit would be required under this part.

2. Paragraph (a) of § 92.27 would be amended by adding "horses," after the word "swine," in the first line thereof.

3. Paragraph (a) of § 92.31 would be amended to read as follows:

(a) For ruminants, swine, horses, poultry, and animal semen intended for importation from Mexico, the importer shall first apply for and obtain from the Division an import permit as provided in § 92.4: *Provided,* That an import permit is not required for horses offered for entry at a land border port designated in § 92.3(c) of this part; and *Provided further,* That an import permit is not required for a ruminant or swine offered for entry at a land border port designated in § 92.3(c) of this part if such animal: (1) Was born in the Mexican States of Tamaupilas, Nuevo Leon, Coahuila, Chihuahua, Sonora, Durango, and Baja California, or the United States, and (2) has been in no country other than the United States or Mexico, and in no Mexican State other than those specified above, and (3) has not, during the preceding 60 days, been corralled, pastured, or held with, or bred by, or inseminated with semen from, any ruminants or swine for which a permit would be required under this part, and (4) is not pregnant as a result of having been bred by, or artificially inseminated with semen from, a ruminant or swine for which a permit would be required under this part.

Any person who wishes to submit written data, views, or arguments concerning the foregoing proposed changes may do so by filing them with the Director, Animal Inspection and Quarantine Division, Agricultural Research Service, U.S. Department of Agriculture, Washington 25, D.C., within 15 days after publication hereof in the FEDERAL REGISTER.

Done at Washington, D.C., this 10th day of January 1962.

M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 62-430; Filed, Jan. 12, 1962; 8:49 a.m.]

Agricultural Stabilization and Conservation Service

[7 CFR Part 1126]

[Docket Nos. AO 231-A15, AO 231-A18]

MILK IN NORTH TEXAS MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Assistant Secretary, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement, and order regulating the handling of milk in the North Texas marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., not later than the close of business the 10th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearings on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order, were formulated, were conducted at Dallas, Texas, on April 24, 25, and 26, and August 29, 1961, pursuant to notices thereof which were issued March 28, 1961 (26 F.R. 2750), and August 18, 1961 (26 F.R. 7837).

The material issues on the record of the hearings relate to:

1. Classification and accounting for dietary products and other fortified fluid milk products.
2. Modification of the conditions for pooling plants also meeting the pooling requirements of another Federal order.
3. "Individual-handler" pooling in lieu of the present marketwide pooling.
4. Classification of fluid milk products disposed of for animal feed.
5. Application of handler location adjustments.

The notice of hearing contained a proposal (No. 6) relating to the establishment of more definite handler, hauler and cooperative responsibilities, under the order, for individual producer's weights and tests of milk. No testimony was offered either in support of or in opposition to Proposal No. 6, therefore, no further mention is made of this proposal.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence at the hearing and the record thereof:

1. *Classification and accounting for dietary products and other fortified fluid milk products.* Fortified fluid milk products should be classified as Class I only to the extent of the weight of an unmodified fluid milk product of the same nature and butterfat content, excluding the dry weight of nonmilk ingredients such as flavoring, sugar, etc. The skim milk equivalent of the nonfat milk solids not classified as Class I should be considered a Class II disposition.

The present order provisions provide for full skim milk equivalent accounting so that when nonfat milk solids in the form of nonfat dry milk or condensed skim milk are added to a fluid milk product to increase the nonfat milk solids content, the skim milk equivalent of the total nonfat milk solids in the product is classified as Class I. Producer milk is given priority of assignment in Class I and to the extent that producer receipts are available in the plant, producers receive credit for a Class I utilization on the full skim milk equivalent of other source nonfat milk solids received in concentrated form and used in fortification or reconstitution. When Class I utilization exceeds available producer receipts and "other source milk" is assigned to Class I a compensatory charge is applicable on such other source milk so assigned unless such milk has been classified and priced as Class I by another Federal order. Where nonmilk products such as sugar, flavoring, etc., are used in making any product, the weight of such additives is deducted before reconciliation of the pounds of skim and butterfat to be classified.

Proprietary handlers proposed that fluid milk dietary foods be classified as Class II in lieu of the present Class I classification and that the skim milk equivalent accounting for nonfat milk solids used in fortification be discontinued. It was their position that the product cost resulting from the present Class I classification of dietary fluid milk products placed them at a competitive disadvantage with similar products in dry form or in hermetically sealed containers made from non-Grade A milk and milk products and distributed through grocery stores, drug stores, food establishments and similar outlets. They suggested that a Class II classification and pricing would permit more competitive resale pricing and hence create a greater demand for their product. Their proposed changes, they suggested, would serve to facilitate the economic disposition of reserve supplies of milk of the market. They further contended that a Class I classification and pricing on the skim milk equivalent of nonfat milk solids used in the fortification of Class I products is unrealistic and unduly increases handlers' costs.

Producers, on the other hand, opposed any change in the present accounting procedure. It was their position that full skim milk equivalent accounting is essential to protect the integrity of the classification scheme under the order and that unless nonfat milk solids used in fortification are accounted for on a skim milk equivalent basis in Class I, handlers have opportunity to displace producer milk in Class I with lower priced other source milk.

A great deal of the testimony on the record was offered to substantiate that dietary milk products were, or were not, required to be made from locally approved milk under the various health ordinances in effect in the marketing area. Regardless of the intent of the ordinances it is apparent that the local health authorities are not interpreting them in a manner so as to require that such products be made from locally approved milk. However, this is of little consequence since handlers are not permitted to bring fluid non-Grade A milk or skim milk into their plants. Under any circumstances it is clear that, because of the perishability of the finished dietary product, handlers use only milk of the highest quality and hence they require and rely on their regular Grade A producers to furnish their full fluid milk requirements. Therefore, it is appropriate and necessary that the Class I classification be retained.

Fortification of fluid milk products customarily is accomplished by the addition of concentrated nonfat milk solids to fluid milk or skim milk to yield a finished product of higher nonfat milk solids content than that of an equivalent amount of whole (producer) milk. Reconstituted products, on the other hand, involve the process of "floating" concentrated milk solids in water to yield a weight of product approximately equal to the weight of milk from which the concentrated product was first made by the removal of water.

Nonfat dry milk and condensed skim milk are ordinarily derived from unpriced milk or milk which has been priced as surplus under a Federal order. These products are not necessarily processed from producer milk and may be made from ungraded milk. An economic incentive exists for handlers to substitute, where possible, reconstituted fluid milk products for fluid milk products processed from current receipts of producer milk. Since such substitution would displace an equivalent amount of producer milk in Class I, the application of skim milk equivalent accounting in this circumstance is economically sound and is necessary to maintain orderly marketing.

The same economic incentive does not exist, however, with respect to the use of nonfat dry milk or condensed skim milk to fortify a fluid milk product. If such solids are to be derived from producer milk, the skim milk must first be processed into usable form; i.e., nonfat dry milk or condensed skim milk. Such products processed from producer milk have no greater value for fortification purposes than similar products purchased on the open market. Concentrated products are used in fortification to increase the palatability of, and hence the salability of, the finished product. Fortification only slightly increases the volume of the product and under no circumstances can it be concluded that the added solids displace producer milk in Class I beyond the minor increase in volume which results.

When the skim milk equivalent provision is applied to fortified milk products, it inflates significantly the utilization and disposition of Class I milk. The inflation in the case of dietary food products results in a Class I classification of about two and one-half times the actual volume.

For reasons previously stated it is neither necessary nor appropriate that handlers continue to be required to account and pay for this inflated volume in Class I. Nevertheless, it is practical and administratively necessary to maintain full skim milk equivalent accounting. These conclusions can be reconciled by providing that fortified fluid milk products shall be classified as Class I only to the extent of the weight of an unmodified fluid milk product of the same nature and butterfat content, excluding the dry weight of any nonmilk additive such as flavoring, sugar, etc. The skim milk equivalent of the nonfat milk solids not classified in Class I should be considered as Class II disposition.

No change was proposed in the accounting procedure followed in cases where flavoring and other nonmilk additives are used in processing unfortified products. The dry weight of such additives should be deducted in determining the amount of skim milk and butterfat to be accounted for. This is generally consistent with the procedure now employed and the conclusions hereinbefore set forth relative to the accounting procedure to be employed for fortified products.

2. *Modification of the conditions for pooling plants also meeting the pooling requirements of another Federal order.* The pooling provisions of the order should be modified to permit a distribution plant meeting the requirements for full regulation under this order and another Federal order and with a greater proportion of its Class I disposition in the other market, but which was pooled under this order in the most recent month, to retain pooling status under this order until the third consecutive month in which a greater volume of Class I sales is made in such other marketing area. However, it must be recognized that the provisions of the other order may require such plant to be pooled under such other order. In such circumstances, the plant should be exempted from regulation under this order except for a requirement to file reports and permit verification. Provision should also be made to exempt a distributing plant doing a greater proportion of its total Class I business in this marketing area, but which, nevertheless, retains pooling status for the month under another order. Federal orders generally provide that a distributing plant meeting the pooling requirements for more than one order shall be regulated under that order covering the area in which the greater volume of Class I sales are made. Nevertheless, it should be recognized that other orders may contain similar provisions to those herein proposed to deter plants from changing back and forth between two orders on a month-to-month basis.

Under the present order provisions, any distributing plant which disposes of Class I milk in the marketing area is subject to full regulation under this order, unless, a greater volume of Class I disposition is made in another Federal order marketing area.

A handler operating pool distributing plants in both Dallas and Fort Worth and also distributing milk in the Central West Texas, Austin-Waco, and San Antonio Federal order markets, proposed that the order be amended to permit his plants to retain pooling status under this order unless Class I sales in another market exceeding Class I sales in this market over an extended period of time. He indicated that his sales in the Central West Texas market were of such nature that a small increase in sales in that market or decrease of sales in this market could result in regulation of the Fort Worth plant under the Central West Texas order. He foresaw the possibility that audit adjustments could result in removal of this plant from regulation under this order, in favor of the Central West Texas order, retroactively. It was this handler's position that a shift in regulation of either of his plants would tend to create disorder in the two markets because of the effect on the respective market blend prices and because of the different procedures prescribed under the two regulations for distributing returns to producers (North Texas has a base rating plan).

While it seems likely that proponent's initial proposal (an identical proposal was also made to amend each of the other Texas Federal orders) was made with the view that its adoption would permit him to bid in military and other government contracts in other Federal order markets without the possibility of losing pooling status under this order, it is apparent that the distribution from his plants is such that a relatively inconsequential change in the proportion of distribution as between the Central West Texas market and the North Texas market could result in regulation under the Central West Texas order. It is also possible that the plant might later shift back to North Texas on a similar basis.

A plant doing business in several Federal order markets generally should be regulated under that order under which it does the greatest proportion of its Class I business. This is the principle under which the existing provisions were effected and this record provides no basis for changing this conclusion. Nevertheless, it must be recognized that with recent technological changes in the processing and distribution fields, milk is moved great distances and distribution routes have been greatly extended. It is apparent that while proponent has greatly increased his Central West Texas sales in recent years he does not contemplate or intend that his plant should become subject to regulation under that order. Such a change would have greater adverse affects on producers than on handlers since class prices as between the two orders are aligned. Nevertheless, it is possible, due to a management error or errors on the part of a plant employee or a route salesman that an inadvertent sale might result in an unintended change in pooling. It is also possible, as proponent suggests, that a change in classification during audit might produce the same result.

The situation can be substantially alleviated by adoption of the changes herein recommended. Under this procedure a handler would have two months warning that his plant was changing from one regulation to another, thus providing a reasonable time to permit adjustment of his business in cases where such change was not contemplated. At the same time, this change retains the principle of regulating a plant under that order where the greatest proportion of its Class I business is done. Since government contracts normally are made for longer periods than two months there is no reason to expect that the changes recommended will have any significant effect on the length of time in which a plant is pooled in a particular order where the change in the proportion of business is the result of gaining or losing a government contract.

While the situation prompting the proposal existed only between the Central West Texas and North Texas mar-

kets, and involved only one plant, nevertheless, because of the location of the North Texas, market in relation to other Federal order markets, it is possible that a similar situation could develop with a plant now regulated under another order or with some other plant now regulated under this order. The treatment herein prescribed would be equally appropriate in such instances.

While there is no indication that the existing pooling requirements for supply plants have presented any particular problem it cannot be presumed that this will be true in the future. Under the existing order provisions a supply plant which during any month ships 50 percent of its Grade A milk receipts to a pool distributing plant and which is assigned to reserve supply credit is eligible for pooling during such month. Under prescribed circumstances the plant may be pooled on the basis of 15 percent shipments if average shipments in the most recent four or less months equal 50 percent of Grade A milk receipts. A plant which is pooled in each of the months of September through December is eligible for automatic pooling status during the January–July period (and also August if a 15 percent shipping requirement is met) on application by the operator to the market administrator prior to January 31. During the September–December period any plant also meeting the pooling requirements of another order and which otherwise would be pooled under another order is exempted from regulation under this order.

During the short production months when milk is most needed to meet the fluid milk requirements of a market, it is desirable that supply plants meeting the pooling requirements of more than one order be pooled on a month-to-month basis under that order under which the greater qualifying shipments are made. This also is an appropriate standard for pooling plants during the flush production months except in the situation where a plant retains automatic pooling status under this order by virtue of performance during the short production months. During the flush production months when milk of supply plants is least likely to be needed for fluid uses this order (as well as many other Federal orders) provides automatic pooling status for supply plants which have been closely associated with the market in the previous short production months by virtue of substantial and regular shipments to the market. Requiring a supply plant with automatic pooling status under this order to be regulated under another order on the basis of casual shipments during any flush production month would normally adversely affect returns to established producers in the market to which shipments were made. It would therefore be more appropriate to permit such a plant to retain pooling status during the flush production months in the North Texas market with which it has had an established association and automatic pooling status. Any plant which might be qualified for automatic pooling status during the flush production months in another Federal order market would be required to make substantial shipments to the North Texas market (normally 50 percent) to qualify for pooling under this order during such months. Shipments of this magnitude could not be considered as casual shipments and under the circumstances it is appropriate to require that a plant shipping 50 percent or more of its supply and having it assigned to reserve supply be pooled under the order.

The recommended order revisions hereinafter set forth will implement the foregoing conclusions and in conjunction with changes recently recommended in the language of other Texas Federal orders will facilitate the determination of where a plant meeting the pooling requirements of more than one order should be regulated.

As was pointed out by proponent one of the major problems, involved in the shifting of plants from one regulation to another, is the impact on producer returns where a base-excess plan is involved. Under the present order provisions, if a plant is removed from regulation under this order in favor of regulation under another order during any part of the base-forming period and subsequently again becomes regulated under this order during all or any part of the base-operating period, the returns to dairy farmers associated with such plant are adversely affected by the fact that such dairy farmers did not acquire a full base. Similarly, dairy farmers delivering to any plant acquiring pooling status for the first time during the base-operating period would be paid only the excess price during the base-operating period. This situation cannot be concluded to be equitable as among producers nor can it be concluded to be in the interest of orderly marketing. Dairy farmers delivering milk to a fully regulated plant should share in returns from the market's Class I sales on the same basis as other producers.

The sole purpose of a base-excess plan is to encourage more even production throughout the year. This purpose will be implemented by providing opportunity for the operator of a newly regulated plant to establish his seasonality of receipts and hence, bases for each of his producers. However, the operator of the plant must assume the responsibility of providing the market administrator the necessary records to verify his receipts from each producer during the base-forming months. The recommended amendment to the computation of bases hereinafter set forth is necessary to implement these conclusions.

3. *Provision for individual-handler pooling in lieu of marketwide pooling.* The present provisions providing for a marketwide pooling should not be changed. The order has provided for marketwide pooling since its inception. Under this arrangement all handlers are required to account to the pool for all of their milk receipts on a classified use basis at specified minimum class prices. Each month the total value of the pool is distributed among all producers on the basis of a blended or uniform price, except that during the months of March through June one blended price is applicable to deliveries of milk not in excess of each producer's established base and another blended price is applicable to deliveries in excess of established bases.

A handler who generally receives little or no milk from members of the major cooperative association, which represents approximately eighty-five percent of all producers on the market, proposed that individual-handler pooling be substituted for the present marketwide pooling. He contended that marketwide pooling has deterred handlers' efforts to maintain self-imposed quality controls and management of producer milk supplies in line with Class I fluid milk requirements. He also said that marketwide pooling has encouraged an oversupply of milk in the market and suggested that under individual-handler pooling distant producers would be encouraged to seek other outlets for their milk.

Another handler distributing a "breed" milk as well as regular Grade A milk supported the proposal for individual-handler pooling. He pointed out that he could not depend on the reserve market supply to supplement his requirements for "breed" milk and that he had no need for a proportionate share of the reserve supply in his regular Grade A operations. He agreed with proponent, that marketwide pooling has attracted an excessive market supply which is adversely affecting producer returns. This he suggested was not in the interest of orderly marketing.

The proposal for individual-handler pooling was further supported by a number of producer witnesses most of whom deliver their milk to proponent's plant. The principal cooperative association opposed the proposal.

The pooling standards as set forth under the order establish what milk shall be subject to regulation. The prices established by the order are those prices which are deemed necessary to maintain an adequate but not excessive supply of milk for the market. The Class I pricing formula includes a supply-demand adjustment mechanism which serves to lower the Class I price as supplies tend to become excessive and increases the price when supplies shorten. It is through this means that supply adjustments are intended under the Act to be accomplished and it is not intended that the market supply will be adjusted by means of the type of pooling procedure.

The milk priced under the Federal order is that milk which the appropriate health authority deems acceptable for disposition as Grade A milk in the marketing area and which is marketed in a way that meets prescribed performance requirements. While handlers may demand higher quality standards than those generally applicable in the market, it is not an appropriate function of the Federal order to re-enforce handlers' efforts in this respect.

When the order was promulgated the Acting Secretary in his decision of July 17, 1951, concluded as follows:

"The alternative to the marketwide pool is the individual-handler pool. Under this latter system producers delivering to each handler receive a uniform price based on each handler's utilization of milk. Because different handlers utilize different proportions of their milk

as Class I and Class II, the uniform prices of individual handlers would vary one from the other. The order has been written to permit a cooperative association to become a handler when necessary to market the surplus milk of its members. Under these circumstances an individual-handler pool would result in an unequal sharing of the market among producers and would not be conducive to orderly marketing. It is concluded, therefore, that marketwide pools are necessary to distribute the returns from the sale of milk equally among producers and to create orderly marketing of producer milk."

It must be concluded that the marketwide pooling arrangement has tended to maintain equality among producers and to assure the orderly disposition of the market's reserve supply. Handlers in the market have very limited manufacturing facilities, other than for ice cream and cottage cheese. Except for proponent, they generally rely on the major cooperative association for balancing supplies and disposition of milk in excess of fluid requirements. The cooperative operates two manufacturing plants, one at Muenster and the other at Sulphur Springs, Texas. In 1960 these plants handled over 50 percent of the total Class II milk (239 million pounds) in the market. Under such circumstances, marketwide pooling is essential to assure that each producer will receive an equitable share of the proceeds from milk utilized in fluid form and that all producers share equally in the cost of handling the market's reserve supply. Clearly also, individual-handler pools would not result in the equitable sharing of the costs of handling market reserves and hence its adoption would engender disorderly marketing conditions in this market. Accordingly, the request for individual-handler pooling is denied.

4. *Classification of fluid milk products disposed of for animal feed.* The provisions specifying the conditions under which fluid milk products disposed of for animal feed may be classified as Class II should be modified.

Under the present order, skim milk and butterfat disposed of in the form of fluid milk products for use as animal feed may be classified as Class II milk up to one-half of one percent of the volume of skim milk and butterfat in fluid milk products disposed of in fluid form, provided certain conditions are met. A handler is required to keep detailed records of the amount and butterfat test of all products disposed of for animal feed, to notify the market administrator prior to such disposition so that he can physically verify disposition, and to furnish a receipt signed by the purchaser of such products setting forth the details of the transaction.

In September 1957, a provision which provided a Class II classification for milk disposed of for livestock feed was deleted from the order on the basis that normal shrinkage plus disposition for animal feed did not exceed the two percent shrinkage allowance in the order. Subsequently, in June 1959, the existing provisions were adopted because it was found that the two percent shrinkage allowance was inadequate to cover both normal loss incurred in plant operations and route returns of fluid milk products sold for livestock feed.

One handler proposed the elimination of the requirements for record keeping and prior notification when fluid milk products are disposed of for livestock feed. He claimed that these conditions were working a hardship on all handlers and on the members of the market administrator's staff. It was his position that it required virtually the full time of one of his employees to maintain the necessary records and meet other requirements necessary to permit a Class II classification for milk which he necessarily disposed of as livestock feed.

Another handler had no objection to the record keeping and reporting requirements, but proposed that the one-half of one percent maximum allowance in Class II for milk disposed of for livestock feed be deleted. He contended that disposition for livestock feed was costly at any price and handlers used this outlet only when there was no means of salvaging the milk for other uses. Hence, there was no need for limiting the volume which might be disposed of in this manner under a Class II classification.

The order does not set forth the specific records which must be kept or the form of reports which must be made to accommodate classification of milk disposed of for other than animal feed. It provides that the handler shall report to the market administrator in the detail and on forms prescribed by the market administrator. In the case of records the handler is required to maintain and make available to the market administrator—such accounts and records of his operations—as are necessary for the market administrator to verify or establish the correct data with respect to receipts and utilization, the weights and tests for butterfat, and other content of all milk and milk products handled. This authority is wholly adequate to permit the market administrator to prescribe the type of report and detail of information which he deems necessary to verify disposition for livestock feed and, accordingly, there is no need to set forth the detailed requirements now contained in the order. However, since the existing order provides that reports relative to receipts and utilization of milk shall be filed on or before the 7th day after the end of each month, it is desirable that the order be amended to provide for the filing of reports relating to disposition for animal feed in the manner and at such times as the market administrator may require. Elimination of the present specified requirements, from the order, will permit the market administrator flexibility to meet varied situations and may relieve handlers of some reporting or record keeping if all of the information now specifically required is not needed by the market administrator for satisfactory verification.

The record provides no basis for deletion of the present condition restricting classification of disposition for animal feed in Class II only up to one-half of one percent of Class I disposition.

Data contained in the market statistics placed in the record by the market administrator show that over the period since June 1959, at no time has the volume of fluid milk products disposed of for animal feed exceeded one-half of one percent of total Class I disposition of fluid milk products. The market average for the entire period since June 1959, approximates only three-tenths of one percent. While some quantities of animal feed disposition were classified as Class I in each month it cannot be determined on the record whether this was the result of inadequate records on the part of certain handlers or whether, in fact, that classified as Class I represented disposition of certain handlers in excess of the one-half of one percent allowed in Class II. Under normal circumstances the existing allowance would appear to be wholly adequate to cover disposition in animal feed of those route returns for which there is no other salvageable uses. Accordingly, the limitation should be retained.

5. *Modification of the procedure for computing handler location adjustment credits.* The procedure for computing location differential credits to handlers should be modified to the extent of providing that the computation shall be made on the basis of the volume of milk remaining after producer shrinkage (deducted in step (1) of the allocation provisions) has been added back (step (9)), less 5 percent of direct producer receipts at the plant.

Under the existing procedure location differential credits are computed on the basis of the volume of milk remaining after the assignment of opening inventories (step (8) in the allocation procedure), less 5 percent of direct producer receipts at the plant.

A proprietary handler who regularly obtains a substantial part of his milk supply from a Missouri plant submitted a proposal (included in the hearing notice) which, under certain circumstances would have substantially increased the volume of his Missouri supply which would be eligible for location differential credits. However, no testimony was offered in support of the proposal.

A witness for the North Texas Milk Producers Association proposed a modification of the proposal contained in the hearing notice. His proposal would decrease the amount of country plant milk receipts on which a location differential credit would be claimed. It was his position that the assignment of any direct receipts from producers to Class II as a step in computing the volume of receipts from country plants eligible for location differential credits was no longer appropriate. He suggested that the existing provision was placed in the order under conditions of short supply in recognition of the fact that additional country plant supplies were needed to assure handlers an adequate supply. Because the supply situation has substantially changed he contended the Missouri milk was no longer needed and local producers should not be called upon to subsidize the shipments of milk from distant sources.

Under the order a handler has freedom of choice as to his source of milk supply. However, if his direct producer receipts exceed 105 percent of the available Class

I utilization plus shrinkage on producer milk no location adjustment credits are allowed on receipts from supply plants. Milk in excess of the market's fluid requirements and which is received at country plants need not be transported to the city for Class II disposition. Accordingly, no location adjustment credits are applicable to Class II milk.

The allocation of 5 percent of direct producer receipts to Class II prior to the allocation of receipts from country plants is intended to permit a handler to recover transportation on that milk which is lost in shrinkage and on that milk which is packaged and distributed but is returned and necessarily used in other than Class I uses. This procedure is concluded to be appropriate and should be continued. However, the existing provision permits location differential credits on a greater volume of milk. Since allowable shrinkage on producer receipts is two percent, the existing procedure has the effect of assigning seven percent of direct producer receipts to Class II rather than five percent, as was intended. This deficiency may be corrected by providing that location differential credits shall be considered on the basis of the volume of milk available after step (9) in the allocation procedure, rather than after step (8).

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the records were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order regulating the handling of milk in the North Texas marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

§ 1126.32 [Amendment]

(1) Add a new paragraph (c) to § 1126.32 to read as follows:

(c) Each handler, with respect to fluid milk products disposed of for animal feed, shall report to the market administrator such information and at such time as the market administrator may prescribe.

§ 1126.41 [Amendment]

2. Delete paragraph (a) (1) of § 1126.41 and substitute therefor the following:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat:

(1) Disposed of in the form of milk, skim milk, buttermilk, flavored milk drinks, cream (except cultured sour cream), and any mixture (except eggnog and bulk ice cream and frozen dairy product mixes) of cream and milk or skim milk: *Provided,* That when any fluid milk product is fortified with nonfat milk solids the amount of skim milk to be classified as Class I shall be only that amount equal to the weight of skim milk in an equal volume of an unfortified product of the same nature and butterfat content;

3. Delete subparagraph (4) of § 1126.41(b) and substitute therefor the following:

(4) Disposed of in the form of fluid milk products and used for livestock feed subject to inspection (at his discretion) by the market administrator and the volume of skim milk and butterfat classified as Class II pursuant to this subparagraph shall not exceed 0.5 percent of the volume of skim milk and butterfat in fluid milk products disposed of in fluid form;

4. Delete the period at the end of subparagraph (6) of § 1126.41(b) and insert a semicolon and add a new subparagraph (7) as follows:

(7) That portion of fortified products excluded from a Class I skim milk classification pursuant to paragraph (a) of this section.

§ 1126.53 [Amendment]

5. In the proviso of § 1126.53, delete the reference "§ 1126.46(a) (1) through (8)" and substitute therefor the reference "§ 1126.46(a) (1) through (9)".

6. Delete § 1126.61 and substitute therefor the following:

§ 1126.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b) or (c) of this section except that the operator shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(a) A plant meeting the requirements of § 1126.10(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order.

(b) A plant meeting the requirements of § 1126.10(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

(c) A plant meeting the requirements of § 1126.10(b) which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August if such plant retains automatic pooling status under this part.

§ 1126.80 [Amendment]

7. Delete the period at the end of paragraph (a) of § 1126.80 and insert a semicolon and add a new paragraph (b) as follows:

(b) In the case of producers delivering milk to a plant which was not a pool plant during the entire base forming period, a daily average base for each such producer shall be calculated pursuant to paragraph (a) of this section on the basis of his deliveries of milk to such plant during August through January: *Provided,* That records of such deliveries to the plant are made available to the market administrator.

Signed at Washington, D.C., on January 9, 1962.

JAMES T. RALPH,
Assistant Secretary.

[F.R. Doc. 62-404; Filed, Jan. 12, 1962; 8:46 a.m.]

[7 CFR Parts 1127, 1129]

[Docket Nos. AO 256-A6, AO 232-A10]

MILK IN AUSTIN-WACO AND SAN ANTONIO, TEXAS MARKETING AREAS

Decision on Proposed Amendments to Tentative Marketing Agreements and Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at San Antonio, Texas, on April 20, 1961, pursuant to notice thereof issued on March 28, 1961 (26 F.R. 2751).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Assistant Secretary, United States Department of Agriculture, on December 11, 1961 (26 F.R. 12037; F.R. Doc. 61-11908), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. No exceptions were filed to the recommended decision.

The material issues on the record of the hearing relate to:

1. Classification and accounting for dietary products and other fortified fluid milk products.
2. Modification of the conditions for pooling plants also meeting the pooling requirements of another Federal order.
3. Modification of the payment provisions of the San Antonio order.
4. Modification of the procedure for computing handler location adjustment credits under the San Antonio order.
5. The classification of skim milk and butterfat disposed of for animal feed under the San Antonio order.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence at the hearing and the record thereof:

1. *Classification and accounting for dietary products and other fortified fluid milk products.* Fortified fluid milk products, including dietary products, should be classified as Class I only to the extent of the weight of an unmodified fluid milk product of the same nature and butterfat content, excluding the dry weight of any nonmilk additives such as flavoring, etc. The skim milk equivalent of the nonfat milk solids not classified as Class I should be considered a Class II disposition.

Under the existing classification provisions of both the Austin-Waco and San Antonio orders the products included in Class I are those fluid milk products which are disposed of for fluid consumption and which are normally required to be made from locally approved milk supplies. Both orders presently provide for full skim milk equivalent accounting. When nonfat milk solids in the form of nonfat dry milk or condensed skim milk are added to a fluid milk product to increase the nonfat milk solids content of the finished product, the skim milk equivalent of the total nonfat milk solids in the product is classified as Class I.

The Austin-Waco order provides for individual-handler pooling and there is no provision for a compensatory payment on other source milk utilized in Class I. However, producer milk is given priority of assignment in Class I and hence, to the extent that skim milk in producer receipts is available, producer milk is credited as Class I utilization on the full skim milk equivalent of other source nonfat milk solids received in concentrated form and used in fortification or reconstitution. The San Antonio order provides for marketwide pooling and, similar to the Austin-Waco order, priority of assignment in Class I is given to producer milk. Where Class I utilization exceeds producer receipts, a compensatory charge is provided for other source milk assigned to Class I and not classified and priced as Class I in any Federal order market. Under both orders the weight of any nonmilk additives such as flavoring, etc., is deducted before reconciliation of the pounds of skim milk and butterfat to be classified.

Proprietary handlers proposed that fluid milk dietary products be classified as Class II in lieu of the present Class I classification and that skim milk equivalent accounting for nonfat milk solids used in fortification be discontinued. It was their position that the product cost resulting from the present Class I classification of dietary fluid milk products placed them at a competitive disadvantage with similar products in dry form or in hermetically sealed containers made from non-Grade A milk and milk products and distributed through grocery stores, drug stores, food establishments and similar outlets. They suggested that a lower classification and pricing would permit more competitive resale pricing and hence create a greater demand for their product. Their proposed changes, they suggested, would serve to facilitate the economic disposition of reserve supplies from these markets. They further contended that a Class I classification and pricing of the skim milk equivalent of nonfat milk solids used in the fortification of Class I products was unrealistic and resulted in an undue cost to handlers.

Producers, on the other hand, opposed any change in the present accounting procedure. It was their position that full skim milk equivalent accounting is essential to protect the integrity of the classification scheme under the Federal order and that unless nonfat milk solids used in fortification are accounted for on a skim milk equivalent basis in Class I, handlers have an opportunity to displace producer milk in Class I with lower priced other source milk.

A great deal of the testimony on the record was offered to substantiate that dietary milk products are, or are not, required to be made from locally approved milk under the various health ordinances in effect in those marketing areas. Regardless of the intent of the ordinances it is apparent that the local health authorities are not interpreting them in a manner so as to require that such products be made from locally approved milk. However, this is of little consequence since handlers are not permitted to bring fluid non-Grade A milk or skim milk into their milk plants. Under any circumstances it is clear that, because of the perishability of the finished dietary product, handlers use only milk of the highest quality and hence they require and rely on local producers to furnish their full fluid milk requirements. Therefore, it is appropriate and necessary that the Class I classification be retained.

Fortified fluid milk products customarily result from the addition of concentrated nonfat milk solids to milk or skim milk in fluid form to yield a finished product of higher nonfat solids content than that of an equivalent amount of whole (producer) milk. Reconstituted products, on the other hand, involve the process of "floating" concentrated milk solids in water to yield a weight of product approximately equal to the weight of milk from which the concentrated product was first made by the removal of water.

Nonfat dry milk and condensed skim milk are ordinarily derived from unpriced milk or milk which has been priced as surplus under a Federal order. These products are not necessarily processed from producer milk and may be made from ungraded milk. An economic incentive exists for handlers to substitute, where possible, reconstituted fluid milk products for fluid milk products processed from current receipts of producer milk. Since such substitution would displace an equivalent amount of producer milk in Class I, the application of skim equivalent accounting in this circumstance is economically sound and is necessary to maintain orderly marketing.

The same economic incentive does not exist, however, with respect to the use of nonfat dry milk or condensed skim milk to fortify a fluid milk product. If such solids are to be derived from producer milk, the skim milk must first be processed into usable form; i.e., nonfat dry milk or condensed skim milk. Such products processed from producer milk have no greater value for fortification purposes than similar products purchased on the open market. Such products are used in fortification to increase the palatability of, and hence the salability of, the finished product. Fortification only slightly increases the volume of the product and under no circumstances can it be concluded that the added solids displace producer milk in Class I beyond the minor increase in volume which results.

When the skim milk equivalent provision is applied to fortified milk products, it inflates significantly the utilization and disposition of Class I milk. The inflation in the case of dietary food products results in a Class I classification of

about two and one-half times the actual volume.

For reasons previously stated it is neither necessary nor appropriate that handlers continue to be required to account for pay for this inflated volume in Class I. Nevertheless, it is practical and administratively necessary to maintain full skim milk equivalent accounting. These conclusions can be reconciled by providing that fortified fluid milk products shall be classified as Class I only to the extent of the weight of an unmodified fluid milk product of the same nature and butterfat content, excluding the dry weight of any nonmilk additive such as flavoring, sugar, etc. The skim milk equivalent of the nonfat milk solids not classified in Class I should be considered as Class II disposition.

No change was proposed in the accounting procedure when flavoring and other nonmilk additives are used for processing unfortified products. The dry weight of such additives should be deducted in determining the amount of skim milk and butterfat to be accounted for. This is generally consistent with the procedure now employed and the conclusions hereinbefore set forth relative to the accounting procedure to be employed for fortified products.

The amendatory language of the respective orders as hereinafter set forth will implement these conclusions.

2. *Modification of the conditions for pooling plants also meeting the pooling requirements of another order.* No change should be made in the basic qualifications for pooling plants under the Austin-Waco and San Antonio orders. However, the provisions prescribing treatment of plants meeting the pooling requirements of more than one order should be clarified and modified to the extent of exempting from regulation, except for reporting and verification any plant which retains pooling status under another Federal order.

Under the present Austin-Waco order a packaging and distributing plant is subject to full regulation if Class I milk in an average amount of 500 pounds per day or 5 percent of Grade A receipts, whichever is less, is disposed of during the month on routes in the marketing area, unless such plant has greater disposition in another Federal order marketing area and would be fully regulated under the other order. A supply plant is subject to full regulation during any month of February through July if shipments are made to a distributing plant on four or more days during the month or if daily average shipments are not less than 3,300 pounds. In any month of August through January shipments must be made on 10 or more days or average not less than 8,300 pounds per day unless the plant was a supply plant in any month of February through July. In this situation the shipping requirement is identical to that for the month of February through July.

Under the present San Antonio order a distributing plant is pooled in any month in which route distribution in the marketing area equals 15 percent or more of receipts from pool plants and approved dairy farmers unless such plant disposed of a greater portion of its milk as Class I milk in another Federal order market in the current month as well as the two preceding months and would be subject to full regulation under such other order. A supply plant is pooled in any month in which not less than 50 percent of its receipts from approved dairy farms is shipped to pool distributing plants, except that if this requirement is met in each of the months of July through February the plant has automatic pooling status for the months of March through June unless nonpool status is elected.

A regulated handler under the North Texas order, operating packaging plants in both Fort Worth and Dallas and distributing milk in a number of the Texas Federal order markets, proposed that the Austin-Waco and San Antonio orders be amended to preclude the pooling of either of his plants under these orders unless its Class I sales in either of these markets should exceed its Class I sales in the North Texas market over an extended period of time. A similar proposal was made to amend each of the other Texas Federal orders.

While the handler's principal problem involves his sales as between the North Texas and Central West Texas markets, nevertheless, it was his position that a similar situation could develop involving either or both of these orders. It was pointed out that, when a handler has approximately equal sales under each of two Federal orders, minor shifts in the volume of sales in one market as compared to the other market could result in a shift in the regulation of the plant from one order to the other. Such a shift in sales could be inadvertent or the result of audit adjustments, whereas a shift in regulation was neither contemplated nor intended by the handler. It was proponents' position that such a shift would not be in the interest of orderly marketing and might have substantial adverse effect on producers involved.

The proposal was opposed by both regulated handlers and by producers. They pointed out that there was no existing situation of the nature described by proponent. They further pointed out that regulation of a plant under the Austin-Waco order, with individual handler pooling, where such plant did more business in another Federal order market could, under certain circumstances, provide the plant a significant competitive advantage.

A plant doing business in several Federal order markets generally should be regulated under that order under which it does the greatest proportion of its business. This is the usual standard by which it is determined under which order a plant should be regulated. Nevertheless, a number of Federal orders, including the San Antonio order, contain a provision similar to that requested by proponent.

In recommending this provision the Assistant Secretary in his decision of November 16, 1960 (F.R. Doc. 60–10848), concluded as follows:

"Some handlers dispose of fluid milk products in the marketing areas of more than one Federal order. Such handlers are regulated under the order in the marketing area where they dispose of the greatest proportion of their milk. If a handler disposes of nearly equal amounts in two marketing areas, it is possible that the regulation of such handlers may periodically shift from one order to the other depending upon slight changes in Class I sales. These shifts in sales are sometimes not discovered until audits are made a month or two later. Periodic shifting of the pooling of such a handler's milk from one order to another tends to be disruptive to both orders. To forestall erratic month-to-month shifts from one order to another in the regulation of a handler, it is concluded that if a handler disposes of a greater portion of his milk as Class I milk in another Federal order marketing area for more than two consecutive months, and the handler would be subject to full regulation under such order if he were exempt from this order, such handler should not be regulated under this order after the second month, except to make reports as the market administrator may require and allow verification of such reports."

It is apparent that proponent was not aware of the present order provision since his proposal was essentially for such a provision. Notwithstanding, his supporting testimony was compatible with the above quoted conclusions of the Secretary and it is concluded that the intent of the existing provision should be retained. However, it is desirable that the provision be clarified and that it be recognized that similar provisions may be contained in other Federal orders. Accordingly, a plant should be exempted from regulation under the San Antonio order, even though it might distribute a greater proportion of its Class I milk in the local market, if it retains pooling status in another market.

Under this procedure a handler would have two months warning that his plant was changing from one regulation to another, thus, providing reasonable time to permit adjustment of his business in cases where such change was not contemplated or desired. At the same time the principle is retained of regulating a plant under that order where the greater proportion of its business is done. Since government contracts normally are made for longer periods than two months there is no reason to expect that this provision will have any significant effect on the length of time in which a plant is pooled in a particular market where the change in proportion of business is the result of gaining or losing a government contract.

Supply plants performing under more than one order are normally pooled during the month under that order under which greater qualifying shipments are made. Since supply plants under the San Antonio order must meet a 50 percent shipping requirement to be eligible to pool no special direction is necessary to determine where a supply plant performing under two orders should be pooled.

It must be recognized that under the individual handler pooling arrangement in effect in the Austin-Waco market a handler might seek regulation under that order primarily for the purpose of

a pricing advantage through the use of unpriced other source milk. It is possible, under certain circumstances that the inclusion of a provision, such as that herein recommended to be retained in the San Antonio order, whereby a plant most recently regulated under the Austin-Waco order but which subsequently disposed of a greater proportion of its milk in a marketwide pool market could profit by holding regulated status for several months under the individual handler pool. In any event there was no showing that such a provision would likely have any application in the market under existing circumstances and since its adoption was generally opposed by both regulated handlers and by producers it is concluded that the requested change should not be adopted on the basis of this record. Nevertheless, in view of the provision of the San Antonio order, as herein proposed to be amended, and the fact that a similar provision is under consideration in the North Texas and Central West Texas orders it is necessary to exempt from regulation under the Austin-Waco order any distributing plant meeting the requirements for full regulation, but which nevertheless, is fully regulated under another Federal order. Since Federal orders generally provide that distributing plants meeting the pooling requirements of more than one order shall be regulated under that order covering the marketing area in which the greater volume of Class I milk is disposed of, this modification could have significance only under circumstances in which a plant retained pooling status under another order for a temporary period under a provision intended to give the operator reasonable time to make sales adjustments as between markets and thus avoid a change from one regulation to another if such change was not contemplated or intended.

The present Austin-Waco order provides no clear direction as to where a supply plant performing under two orders should be regulated. This deficiency can be corrected by providing that any plant meeting the requirements for regulation under this order and another Federal order shall be regulated under this order unless greater qualifying shipments are made during the month to plants regulated under another order or the plant retains automatic pooling status under such other order by virtue of performance in a previous period. During the flush production months, when milk of supply plants is least likely to be needed for fluid uses, many Federal orders provide automatic pooling status for supply plants which have been closely associated with the market in previous short production months by virtue of substantial and regular shipments to the market. Requiring a supply plant with automatic pooling status under another order to be regulated under this order during the flush months, on the basis of casual shipments could have an adverse effect on returns to dairy farmers delivering to such plant since their normal market would likely be operated under a marketwide pooling arrangement and regulation under an individual-handler pool (as provided in this order) would deny them a share of the Class I sales in the marketwide pool which they normally serve. It is therefore more appropriate to permit such a plant to retain pooling status during the flush production months in the market with which it had an established association and automatic pooling status.

3. *Modification of the payment provisions of the San Antonio order.* The payment provisions of the San Antonio order should be amended to provide that a handler shall pay a cooperative association for milk received from such cooperative association in its capacity as a handler on a twice a month basis.

The order presently provides that producers shall be paid twice monthly. On or before the last day of each month an advance payment must be made for milk received during the first 15 days of the month at not less than the Class II price for the preceding month. Final payment is due on the 15th day of each month for the full value of milk received from producers during the preceding month less advance payments previously made. Upon request of a cooperative association authorized to collect payments otherwise due its individual members the payments must be made to such cooperative on the 26th and 13th day of the month, respectively. However, where milk is purchased from a cooperative association in its capacity as a handler only one payment date is provided. On or before the 13th day of each month full payment is required for milk received from the cooperative during the preceding month.

The payments to a cooperative association are required a few days in advance of payments to individual producers in order that the cooperative may pay its members at the same time at which nonmembers are paid. In order that a cooperative may have the necessary funds to make an advance payment to producers by the last day of the month it is necessary that it receive advance payment from handlers for the milk which it delivered in its capacity as a handler as well as for the milk delivered in the names of its individual members. The order should be amended to require such payments. Producers proposed that the language of the payment provisions be further modified to clarify that the required payments be in the hands of the cooperative by the date specified. They suggested that handlers do not uniformly meet the payment schedules and that this seriously impedes their office work.

The uniform price is announced by the market administrator on the twelfth day of the month. Therefore, it would be impractical to require that handlers make final settlement to the association prior to the thirteenth day of the month. Under usual circumstances payments are made by mail and would ordinarily be received by the cooperative on the thirteenth or the fourteenth depending on time of mailing. Since earlier payment would necessarily be impractical except in situations where the uniform price was announced earlier than the date specified (and this would not normally be possible) the cooperative must adjust its operations to this schedule. On the other hand, any handler not mailing or delivering payments on the specified date is violating the order. Hence, no change in the order is needed in this regard.

Handlers proposed that the order be amended to eliminate some of the detail they are required to report regarding individual producer deliveries in making payments to a cooperative association. They suggested that the information was unnecessary and was not used by the cooperative in computing payments to its individual members. The cooperative on the other hand pointed out that all of the information now required was necessary in order to compute individual member payments. Since this is the identical information which is required to be reported in making payments to individual nonmember producers and it is needed by the cooperative in computing payments to its members, the proposal is denied.

The payment provisions should be further revised to make clear that each handler whose obligation is computed pursuant to § 1127.70 is required to make payment to the producer-settlement fund by the 14th day of the month of any amount by which such obligation exceeds his required payment pursuant to § 1127.80. This is clearly the intent of the present provision and no substantive change is intended. However, producers pointed out that the language was somewhat ambiguous and requested redrafting of § 1127.84. Accordingly, the payments to the producer-settlement fund provisions has been revised.

4. *Modification of the procedure for computing handler location adjustment credits under the San Antonio order.* The handler location adjustment provision of the order should be modified to provide that for purposes of computing location adjustment credits direct receipts at a pool plant of milk from dairy farmers for which a cooperative association is the handler shall be considered as receipts from producers at such plant.

The order presently provides that location adjustment credits may be applicable to receipts from other plants only on that volume of milk representing the excess of Class I disposition over 95 percent of receipts from producers. Assignment of such Class I disposition to transferor plants is made in sequence beginning with plants having the lowest rate of adjustment credit. The order further provides that unless it elects otherwise a cooperative association shall be the responsible handler for bulk tank milk of its producers which is delivered directly from the farm to a pool plant in tank trucks owned and operated by or under control of the association. Such milk is deemed to have been received by the cooperative at a pool plant at the location of the pool plant to which it is delivered.

A proprietary handler receiving milk both from local producers and from a supply plant proposed the amendment herein recommended. He pointed out that the local cooperative was not presently acting as the responsible handler on bulk tank milk. Hence, if the cooperative were to become the handler on

that milk, the result would be a reduction in the volume of supply plant milk for which location adjustment credits could be claimed.

Under the order a handler has freedom of choice as to his source of milk supply. However, if direct receipts at his pool plant are sufficient to cover his Class I requirements no location adjustment credits are allowed on receipts from supply plants. Milk in excess of the market's fluid requirements and which is received at country plants need not be transported to the city for Class II disposition. Accordingly, no location adjustment credits are applicable to Class II milk. The order does recognize, however, that a handler must have some milk in excess of his actual bottling requirements in his plant because of shrinkage, route returns, etc. Accordingly, location adjustment credits are applicable on that volume of milk represented by the amount by which actual Class I disposition exceeds 95 percent of direct producer receipts. The fact that the local cooperative association might elect to become the handler for its member milk delivered in bulk tanks directly from the farms would in no way change the proprietary handler's milk requirements. Hence, it is appropriate, for purposes of computing location differential credits to consider such receipts as direct receipts from producers.

5. *Classification of skim milk and butterfat disposed of for animal feed.* Skim milk and butterfat disposed of for animal feed under the San Antonio order should continue to be classified as Class II.

Producers proposed that the classification provisions be amended to limit the volume of skim milk and butterfat which a handler might dispose of for animal feed under a Class II classification to one-half of one percent of fluid milk products disposition and only under conditions where detailed requirements for reports and records are met. Proponents contended that the order provides a two percent shrinkage allowance and this in conjunction with a one-half of one percent maximum Class II disposition as animal feed would adequately cover normal shrinkage and losses from spoilage, etc., for which there is no use other than animal feed. Handlers, on the other hand, opposed any change in the classification of animal feed. They contended that disposition as livestock feed was costly to handlers and that such disposition was made only under circumstances where the milk involved could not be salvaged for other uses.

While producers seem to feel that some handlers in the market may be using livestock disposition to cover excess shrinkage or possibly even actual disposition in Class I uses it is apparent that they have no grounds for such a position. The market administrator has the authority under the order to require the necessary reports and records to permit satisfactory verification of any alleged livestock feed disposition and clearly he is exercising this authority. Hence, there can be no foundation for producers' position.

There is little or no prospect that a handler could realize a return over the order Class II price for milk disposed of for livestock feed. No handler is engaged in the manufacture of milk products into livestock feed. The only disposition for livestock feed is fluid milk and milk products which could not economically be otherwise used or which have deteriorated beyond the point of salvage. Since the market administrator requires specified reports and records which permit verification of such disposition to his own satisfaction, it must be concluded that any such reported disposition which cannot be verified to his satisfaction would not be permitted a Class II classification. Accordingly, there is no reason for any change in the existing provisions and the proposal is denied.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the respective marketing areas, and the minimum prices specified in the proposed marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which hearings have been held.

Marketing agreements and orders. Annexed hereto and made a part hereof are four documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Austin-Waco Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Austin-Waco Marketing Area", "Marketing Agreement Regulating the Handling of Milk in the San Antonio, Texas, Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the San Antonio, Texas, Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreements, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreements are identical with those contained in the orders as hereby proposed to be amended by the attached orders which will be published with this decision.

Determination of representative period. The month of November 1961 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached orders amending the orders regulating the handling of milk in the Austin-Waco and San Antonio, Texas, marketing areas, are approved or favored by producers, as defined under the terms of the orders as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing areas.

Signed at Washington, D.C., on January 9, 1962.

JAMES T. RALPH,
Assistant Secretary.

Order [1] Amending the Order Regulating the Handling of Milk in the Austin-Waco Marketing Area

§ 1129.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Austin-Waco marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Austin-Waco marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

§ 1129.41 [Amendment]

1. Delete paragraph (a) of § 1129.41 and substitute therefor the following:

(a) *Class I milk.* Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat (1) disposed of in fluid form as milk, skim milk, buttermilk, flavored milk drinks, cream, cultured sour cream, any mixture of cream and milk or skim milk (other than frozen storage cream, aerated cream products, eggnog, ice cream mix or other frozen mixes, evaporated or condensed milk and any milk product contained in hermetically sealed containers): *Provided, however,* That when any such product is fortified with nonfat milk solids the amount of skim milk to be classified as Class I shall be only that amount equal to the weight of skim milk in an equal volume of unfortified product of the same nature and butterfat content, and (2) not accounted for as Class II milk.

2. Delete the word "and" at the end of subparagraph (3) of § 1129.41(b).

3. Replace the period at the end of subparagraph (4) of § 1129.41(b) with a semicolon, add the word "and" immediately thereafter and add a new subparagraph (5) to read as follows:

(5) Skim milk contained in any fortified product designed pursuant to paragraph (a)(1) of this section in excess of the pounds of skim milk in such product classified as Class I pursuant to such subparagraph.

4. Delete § 1129.61 and substitute therefor the following:

§ 1129.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to any plant specified in paragraph (a), (b), or (c) of this section except that the operator thereof shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(a) An approved distributing plant which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in such other Federal order marketing area than is disposed of on routes (other than to a distributing plant(s)) in the Austin-Waco marketing area.

(b) An approved distributing plant which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes (other than to a distributing plant(s)) in the Austin-Waco marketing area than is disposed of on routes in such other Federal order marketing area, but which plant is, nevertheless, fully regulated under such other Federal order.

(c) An approved supply plant which (1) meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, or (2) retains automatic pooling status under another Federal order.

Order[1] Amending the Order Regulating the Handling of Milk in the San Antonio, Texas, Marketing Area

§ 1127.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the San Antonio, Texas, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the San Antonio, Texas, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

§ 1127.41 [Amendment]

1. Substitute a colon in place of a semicolon at the end of subparagraph (1) of paragraph (a) of § 1127.41 and add the following: *"Provided, however,* That when any such product is fortified with nonfat milk solids the amount of skim milk to be classified as Class I shall be only that amount equal to the weight of skim milk in an equal volume of unfortified product of the same nature and butterfat content;"

2. Add a new subparagraph (4) immediately following subparagraph (3) in § 1127.41(b) to read as follows:

(4) Skim milk contained in any fortified product designated in subparagraph (a)(1) of this section in excess of the pounds of skim milk in such product classified as Class I pursuant to such subparagraph.

§ 1127.54 [Amendment]

2a. Delete the proviso in § 1127.54 and substitute therefor the following: *"Provided,* That in calculating such adjustments, transfers to a pool plant at which a location adjustment is not applicable or at which it is less than at the transferor plant may be assigned to Class I only to the extent that Class I disposition at the transferee plant exceeds 95 percent of the receipts from producers and a cooperative association(s) in its capacity as a handler pursuant to § 1127.10(d) at such plant. Such assignment to transferor plants shall be made first to plants at which no location adjustment credit is applicable and then in sequence to plants at which the lowest rate of such adjustment credit would apply."

3. Delete § 1127.60 and substitute therefor the following:

§ 1127.60 Handlers subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a) or (b) of this section except that the operator thereof shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator, and, in the event he has disposed of on routes in the marketing area Class I milk which was neither classified nor priced under such other order or on which a compensatory payment was not made under any other order, shall pay to the market administrator on or before the 13th day of each month an amount computed by multiplying the total volume of such Class I milk disposed of on routes in the marketing area from such plant during the preceding month by the rate of compensatory payment computed pursuant to § 1127.65.

(a) A plant meeting the requirements for pooling pursuant to § 1127.8(a) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all of the provisions of this part in the immediately preceding month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its Class I route disposition is made in such other marketing area unless notwithstanding the provisions of this paragraph it is fully regulated under such other order.

(b) A plant meeting the requirements for pooling pursuant to § 1127.8(a) which also meets the pooling requirements of another Federal order on the basis of route distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area, but which plant is fully regulated under such other Federal order.

§ 1127.80 [Amendment]

4. Delete paragraph (a) of § 1127.80 and substitute therefor the following:

(a) Each handler shall pay to a cooperative association on or before the 13th day of the month, for milk received from it during the preceding month for which such association is a handler pursuant to § 1127.10(d), the value of such milk at not less than the applicable class prices: *Provided, however,* That for each hundredweight of milk so received during the first 15 days of any month, such handler shall, upon written request of the cooperative association make an advance payment to such association by the 26th day of the month at not less than the Class II price of the preceding month, in which case the obligation of the handler otherwise payable on or before the 13th day of the following month shall be reduced by the amount of such advance payment.

§ 1127.84 [Amendment]

5. Delete § 1127.84 and substitute therefor the following:

§ 1127.84 Payments to the producer-settlement fund.

On or before the 13th day after the end of each month each handler, including a cooperative association which is a handler, shall pay to the market administrator the amount by which the value of milk for such handler pursuant to § 1127.70, for such month exceeds the obligation pursuant to § 1127.80(b) of such handler to producers for milk received during the month.

[F.R. Doc. 62-402; Filed, Jan. 12, 1962; 8:46 a.m.]

[7 CFR Part 1128]

[Docket No. AO 238-A12]

MILK IN CENTRAL WEST TEXAS MARKETING AREA

Decision on Proposed Amendments to Tentative Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Abilene, Texas, on April 17-18, 1961, pursuant to notice thereof issued on March 28, 1961 (26 F.R. 2755).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Assistant Secretary, United States Department of Agriculture, on November 29, 1961 (26 F.R. 11498; F.R. Doc. 61-11496), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues on the record of the hearing relate to:

1. Classification and accounting for dietary products and other fortified fluid milk products.
2. Classification of sour cream and related products.
3. The level of Class I price and the rate of location adjustments.
4. Revision of the pooling requirements for distributing plants.
5. Modification of the shrinkage provisions.
6. Modification of the conditions for pooling approved plants also meeting the pooling requirements of another Federal order.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Classification and accounting for dietary products and other fortified fluid milk products.* The order should be amended to provide for full skim milk equivalent accounting. Dietary products and other fortified fluid milk products should be classified as Class I only up to the weight of an equal volume of an unmodified product of the same nature and butterfat content. This skim milk equivalent of the added solids in excess of such weight should be classified as Class II.

Under the existing classification provisions the products to be classified as Class I are those fluid milk products which are disposed of for fluid consumption and which are normally required to be made from locally approved milk supplies. Unlike many Federal orders nonfat milk solids used to fortify Class I products or in the manufacture of Class II products are accounted for on a pound-for-pound basis, rather than on a milk equivalent basis. However, if producer milk is processed into Class II products in a pool plant and such products are later used in such plant in fortification, reclassification is on the basis of milk equivalent. Nonfat milk solids used to make reconstituted fluid milk products, also are accounted for on a milk equivalent basis. Where nonmilk products such as salt, sugar, flavoring, etc., are used in making any product, the weight of such additives is deducted from the finished product weight before reconciliation of the pounds of skim and butterfat to be classified.

Handlers proposed that fluid milk dietary foods be classified as Class II in lieu of the present Class I classification. It was their contention that the product cost resulting from the present Class I classification places them at a competitive disadvantage with similar products in dry form or in hermetically sealed containers made from non-Grade A milk and milk products distributed through grocery stores, drug stores, food establishments and similar outlets. They suggested that a lower classification and pricing would permit more competitive resale pricing and hence create a greater demand for such product. This they contended would serve to increase overall returns to producers because less milk would be disposed of necesarily in Class II-A (Cheddar cheese).

Producers opposed any change in the classification scheme, but proposed that the accounting procedure be amended to require full skim milk equivalent accounting for all nonfat milk solids used in fortification of any Class I product. They contended that full milk equivalent accounting is essential to protect the integrity of the classification scheme under the Federal order. It was their position that producers now are not returned the full use value of the skim milk and butterfat utilized in Class I products when fortification is involved and that handlers have opportunity to displace producer milk in Class I with lower priced other source milk.

A great deal of the testimony on the record was offered to substantiate that dietary milk products were, or were not, required to be made from locally approved milk under the various health ordinances in effect in the marketing area. Regardless of the intent of the

ordinances it is apparent that the local health authorities are not interpreting them in a manner so as to require that such products be made from locally approved milk. However, this is of little consequence since handlers are not permitted to bring fluid non-Grade A milk or skim milk into their fluid milk plants. Under any circumstances it is clear that, because of the perishability of the finished dietary product, handlers use only milk of the highest quality and hence they require and rely on local producers to furnish their requirements. Therefore, it is appropriate and necessary that the Class I classification be retained.

Notwithstanding producers' position, the existing accounting procedure has provided producers assurance that their milk will not be displaced in Class I by lower priced other source milk. Further, it must be concluded that producers have received the full use value for their milk. Nevertheless, the present accounting procedure in reality is neither product pound nor skim equivalent accounting. Because of the market's interrelationship with other regulated markets it is desirable that the accounting procedure be revised to conform with that employed under all of the other Texas Federal order markets, i.e., full skim milk equivalent accounting.

When nonfat milk solids are added to a fluid milk product for purposes of fortification such solids must be in the form of nonfat dry milk or condensed skim milk. If such solids are to be derived from producer milk, the skim milk must first be processed into usable form; i.e., nonfat dry milk or condensed skim milk. Such products processed from producer milk have no greater value for fortification purposes than similar products purchased on the open market. Such products are used in fortification to increase the palatability of, and hence the salability of, the finished product. Fortification only slightly increases the volume of the product and under no circumstance can it be concluded that the solids displace producer milk in Class I beyond the minor increase in volume which results. To the extent that fortification enhances the palatability of the finished product and hence its salability, it actually provides a greater outlet for producer milk in Class I. Hence, it would be inappropriate to increase handler's costs for fortified products.

It is concluded therefore that under the skim milk equivalent accounting procedure herein recommended fortified products should be classified as Class I only to the extent of the weight of an unmodified fluid milk product of the same nature and butterfat content, excluding the dry weight of any nonmilk additive such as flavoring, minerals, etc. The skim milk equivalent of the nonfat milk solids not classified as Class I should be considered a Class II disposition. This procedure will provide essentially the same product cost to handlers as now results from the present accounting and classification procedure. However, it provides a uniform basis of accounting for all nonfat milk solids, regardless of use and hence is more logical and should be a better understood procedure than that presently employed.

Where flavoring and other nonmilk additives are used in processing unfortified products, the dry weight of such additives should be deducted in determining the amount of skim milk and butterfat to be accounted for. This is generally consistent with the procedure now employed and the conclusions hereinbefore set forth relative to the accounting for fortified products.

Notwithstanding the conclusions hereinbefore set forth, it is essential where reconstitution, rather than fortification, is involved that the full skim milk equivalent of the nonfat milk solids used be classified in Class I. Unlike fortification, when nonfat milk solids are used in reconstituting any fluid milk product they displace in Class I use a volume of producer milk equal to the volume of the finished reconstituted product. Unless handlers are required to account for such solids on a skim milk equivalent basis in Class I there would be a substantial incentive for them to reconstitute wherever possible. This would tend to result in unequal costs as between handlers. Further, if the order permitted handlers to obtain unpriced milk for Class I uses whenever it was advantageous to do so while producer milk was utilized in Class II it would not be effective in carrying out the purpose of the Act and the market would be deprived of a dependable milk supply.

2. *Classification of sour cream and related products.* The classification provisions should be revised to provide in the case of sour cream, that only sour cream and those sour cream products which are distributed under a Grade A label shall be classified as Class I. Such products distributed without a Grade A label should be classified as Class II.

Handlers proposed revision of the classification provisions to provide a Class II classification for all sour cream and sour cream derivatives such as sour cream dressings, dips, toppings, etc. They pointed out that they compete for sales of such products with handlers from adjacent Federal order markets where such products are classified as Class II. They also compete with such products processed in plants in distant unregulated markets and sold through grocery and dairy stores within the marketing area.

Producers opposed any change from the present Class I classification, pointing out that the applicable health regulations in the local market require that sour cream carry a Grade A label and that while sour cream products are not required to be so labeled, nevertheless, regulated handlers use only Grade A milk in processing such products.

The products required to be made from locally approved milk supplies are classified as Class I. A Class I classification and pricing for such products is essential to assure sufficient returns to producers to encourage the maintenance of an adequate milk supply for the market. However, it is not necessary that sufficient producer milk be available to supply the market's requirements for sour cream products not required to be made from approved milk. Such requirements, under normal circumstances, can be supplied more economically through manufactured dairy products procured on the open market. Nevertheless, to the extent that the reserve supply of the local fluid market is available for disposition in such products its economic utilization should be encouraged.

Products derived from sour cream and originating in unregulated markets are now being distributed in the marketing area in direct competition with locally made products. In addition, regulated plants under other orders, where sour cream products are classified as Class II, are distributing such products in the local market. None of these products are marketed under a Grade A label, however.

It is likely that locally regulated handlers are operating at a competitive disadvantage in the distribution of sour cream products, by virtue of their higher product costs under a Class I classification. Under the circumstances, it is desirable that the classification of sour cream products not distributed under a Grade A label be changed to Class II. However, if handlers sell their locally made products as sour cream or under a Grade A label to comply with local health regulations the product should continue to be classified as Class I.

3. *The level of the Class I price and the rate of location adjustment.* The current level of the Class I price under the Central West Texas order should be continued and no change should be made in the structure of, or in the amount of the location differentials provided.

The Class I price applicable at plants in the Abilene area is currently set at a level of 25 cents over the North Texas Class I price and the price applicable at plants located within 70 miles of Midland, Texas, is 15 cents over the Abilene price. The price at plants located east of the 103d principal meridian, more than 180 miles from Midland and in excess of 70 miles but less than 105 miles from Abilene is 20 cents less than the Abilene price. The price at plants so located but in excess of 105 miles from Abilene is 25 cents less than the Abilene price.

Three handler proposals to revise the Class I pricing provisions were considered at the hearing. The intent of these proposals generally was to provide one level of Class I pricing throughout the market at a level identical to that under the North Texas order. Adoption of the proposals would result in a 25-cent lesser price at Abilene and 40-cent lesser price for plants within 70 miles of Midland.

Proponents contend that under the existing pricing provisions they are placed at a competitive disadvantage with North Texas handlers who have a lesser product cost and who, they suggest, have lower processing costs because of their larger plant volumes. North Texas handlers opposed any change in pricing provisions. They pointed out that historically they have had substantial distribution in the local market and that the existing pricing as between the two markets does not fully reflect transportation costs from their processing plants to the local market. Producers

also opposed any change in the pricing mechanism, contending that the market was in a comfortable but not an oversupplied situation and that the existing price level was necessary to maintain an adequate market supply.

The Class I price in the Central West Texas market must be set at a level sufficient to maintain an adequate milk supply to meet the fluid milk requirements of local handlers. However, too high a price in relation to prices in adjacent regulated markets likely would result in a displacement of sales of local handlers by sales of handlers from the adjacent markets.

While production over an extended period has increased at a more rapid rate than have Class I sales, nevertheless, during 1960, 83 percent of total producer receipts were utilized in Class I. Official notice is taken of the market administrator's releases of receipts and utilization and price announcements for the months of April through July 1961. While producer receipts, thus far in 1961, have continued to increase in relation to Class I sales, the supply-Class I sales relationship in the local market is a component of the supply-demand adjustment mechanism used in computing the North Texas Class I price on which the Central West Texas Class I price is based. Hence, the increased supply situation is effecting a downward adjustment in the Class I price level for the local market and it cannot be concluded on the basis of the record that a further price adjustment is necessary at this time.

When the order was placed in effect in 1952, local handlers had approximately 70 percent of the Class I sales in the marketing area. The remaining sales were made by handlers from other markets, primarily North Texas. During 1957 local regulated handlers made 75 percent of the market's Class I sales. However, this percent has declined steadily since that year with the result that during 1960 local handlers made only 70 percent of the market's Class I sales, the identical position which they held at the inception of the order.

From 1957 through 1960, sales of nonpool handlers within the market increased at a higher rate than did sales of pool handlers. Since March 1960, on a month-to-month basis such sales have generally declined in comparison to the same month of the preceding year. During 1961 sales of nonpool handlers have also decreased in relation to the same period one year earlier.

In comparing local Class I sales of outside handlers with those of local handlers it must be recognized that there has been a substantial reduction in the number of local handlers. North Texas handlers have purchased a number of small businesses in the Central West Texas market, closed the plants and are serving portions of the market from their North Texas pool plants. In some cases, the businesses purchased and their areas of distribution are closer to the North Texas plants than to the plants of existing Central West Texas handler. While the remaining local handlers contend that they have lost substantial sales to North Texas handlers it cannot be established whether, in fact, the decline in the proportion of the market's total Class I business done by local handlers reflects the volume of sales made by plants absorbed by North Texas handlers or an actual loss of business by the remaining plants.

The location differentials presently contained in the order were established to reflect costs of transporting bulk milk from outlying plants and the differences in costs of transporting milk from the normal supply area to the various plant locations. They were deemed necessary to assure the maintenance of an adequate milk supply for the market. They do not necessarily reflect the cost of moving packaged milk from adjacent markets. Since the bulk of the local milk supply continues to move directly from the farm to local processing plants rather than through supply plants it cannot be concluded that the location allowances are excessive.

The 15-cent higher price applicable at the plant in the Midland area was established to reflect the greater distance and higher transportation cost of moving milk from producers' farms to that plant. Much of the local milk supply for the three Central West Texas distributing plants located at Abilene and San Angelo originates in the area east of Abilene, particularly, the counties of Erath, Comanche, Eastland, Hamilton, Wise and Archer. While there has been a substantial shift in the source of supply of the local Midland plant from Comanche County to western Texas and eastern New Mexico, nevertheless, a significant part (about 16 percent in 1961 as compared to 44 percent in 1954) of this plant's supply still comes from Comanche County. Under the circumstances, it is not apparent, on the basis of this record, that this plant could maintain an adequate milk supply if the differential between Abilene and Midland were reduced or eliminated.

4. *Revision of the pooling requirements for distributing plants.* The allowable Class I route disposition in the marketing area within which a distributing plant, not under the routine inspection of the local health authorities, may maintain unregulated status should be reduced to less than 10 percent (presently 15 percent) of such plant's total Class I sales.

One handler proposed that the pooling provisions be revised to require full regulation of all plants with any Class I disposition in the marketing area. As an alternative, he proposed that a plant, not under the routine inspection of the local health authority, with 5 percent or more of its total Class I business in the marketing area be subject to full regulation. He contended that the present provisions have permitted a multiple plant competitor, with two plants regulated under the order, to build sales in the marketing area from an unregulated plant on the basis of milk purchased at a price approximating the order blend price. When in-area sales from such plant approached the 15 percent limitation, which would require full regulation of the plant, a portion of the sales so established were transferred to a regulated plant, thus providing further opportunity for the handler to build additional sales from the unregulated plant.

It is neither necessary, nor desirable, that a distributing plant with only a small proportion of its total Class I sales within the marketing area be subject to full regulation. Such plant would be more closely associated with another market where prices paid producers might be either higher or lower than those in the regulated market. If such handler were competing for producers in a market where returns exceeded those which this order would provide, requiring such handler to equalize through the marketwide pool might place him at a serious competitive disadvantage in maintaining a milk supply. On the other hand, if pay prices in his local market were lower than the prices provided by the order, requiring such handler to account for all of his milk at higher prices might place him at a serious competitive disadvantage with his primary competition. Nevertheless, it would be inappropriate to permit a handler a pricing advantage on milk disposed of in this market. The requirement that an unregulated handler pay into the pool, on each hundredweight of milk distributed in the regulated market, the difference between the order Class I price and the lowest prices paid to his producers on an equivalent volume of milk was concluded to be the appropriate means for assuring equal pricing to all handlers for Class I milk disposed of in the marketing area. No request or suggestions were made for changing this procedure.

While it cannot be concluded that the operation of the existing provisions have been inappropriate, it is apparent, in the incident complained of, that the regulated handler, who also operates an unregulated plant, has for some reason continued to increase his in-area sales from the unregulated plant. Whether this is the result of a normal increase in demand in the particular sales area served or, in fact, an increase in business at the expense of regulated handlers, resulting from some procurement cost advantage cannot be ascertained on the basis of this record. Nevertheless, a substantial portion of the unregulated plant's sales in the market have now been transferred to one of the handler's fully regulated plants with the result that such unregulated plant's in-area sales are now less than 10 percent of its total Class I business. It is apparent that the multiple plant handler has considerable flexibility in his choice of serving certain customers from either his regulated or his unregulated plants. Accordingly, a reduction in the percentage of sales permitted to maintain unregulated status will not result in any undue hardship to this handler. Since no other unregulated plant has as much as 10 percent of its total Class I business in the marketing area it is appropriate to reduce the existing 15 percent requirement to 10 percent.

Proponent further proposed that as as his pro rata share of the costs of administration of the order, any unregulated handler with distribution in the

marketing area be required to pay the administrative assessment in the same manner and on the same volume of milk as fully regulated handlers rather than merely on the volume of his in-area Class I sales. He contended that the audit costs in connection with such a handler are substantially the same as for a fully regulated handler and accordingly, such handler should share proportionately in the cost of order administration.

Contrary to proponent's position, the audit of records of a handler with minor sales in the market normally is not as extensive or costly as that of fully regulated handlers. Under usual circumstances the audit procedure involves merely ascertainment of the volume of milk disposed of on routes in the marketing area and of the lowest prices paid to producers for an equivalent volume of milk. It is only under circumstances where the volume of milk so disposed of approximates the maximum allowable percentage that extensive audit is required. Hence, the assessment presently provided for such a handler is appropriate and no change should be made in this regard.

5. *Modification of the shrinkage provisions.* The classification provisions of the order should be amended to provide a maximum 2 percent shrinkage allowance on skim milk and butterfat, respectively, in producer milk in Class II during all months of the year. Provision also should be made for an appropriate division of the shrinkage allowance between handlers when interhandler transfers are involved.

The present order provisions provide that each handler's total shrinkage during the month shall be prorated between his receipts of producer milk and other source milk. Actual shrinkage of skim milk in producer receipts, not in excess of two percent during the months of July through March and five percent during the months of April through June is classified as Class II. Actual shrinkage on butterfat in producer receipts to be classified as Class II is limited to two percent in all months of the year. The total shrinkage in other source milk is classified as Class II. No provision is made for a division of the shrinkage as between handlers where interhandler transfers are involved. The shrinkage allowance on producer milk applies only to the receiving handler.

A handler buying all of his fluid milk requirements from a cooperative association proposed that the 2 percent shrinkage allowance be split to permit the cooperative up to one-half of one percent in Class II and the transferee handler the remaining one and one-half percent shrinkage. He contended that, while an overall shrinkage limitation of 2 percent is reasonable, the greater proportion of actual shrinkage occurs in processing milk through a plant rather than in receiving milk. Notwithstanding, because he buys his milk from the cooperative association all of his plant shrinkage is classified as Class I.

While all producers on the market now have farm bulk tanks and the hauling is controlled by coperatives, whose membership include virtually 100 percent of the producers, nevertheless, with one exception the proprietary handlers in the market are the responsible handlers in accounting to the pool for the milk picked up at the farm and delivered to their plants. They account for the milk of each of their producers on the basis of the farm bulk tank stick reading and the butterfat tests of samples drawn at the farm. That part of their total shrinkage experience (including shrinkage between the farm and the plant) allocated to producer receipts and not in excess of 2 percent is accounted for as Class II milk.

In only one instance does the cooperative act as the responsible handler on the bulk milk which it picks up at the farm and delivers to the plant of a proprietary handler. In this situation the cooperative, as the responsible handler, accounts for its actual shrinkage experience, not in excess of two percent as Class II and the proprietary handler has no Class II shrinkage allowance on the processing of this milk.

Producers opposed any change in the present provision pointing out that the proponent handler purchases milk on the basis of the volume measured through a flow meter in his receiving pipe line and at the butterfat tests determined from samples taken by an automatic in-line sampler at his plant, whereas the cooperative's obligation to the pool is based on the farm tank stick measurements and the butterfat tests of the farm drawn samples. They further pointed out that the difference between volume determined on the basis of farm tank stick readings and as recorded through the flow meter was generally less than one-half of one percent. However, discrepancies between the butterfat test of the milk as determined from farm drawn samples and from samples taken by the in-line sampler were substantial and the cooperative required the full 2 percent shrinkage allowance because of their excessive butterfat losses. Other handlers, they pointed out, were purchasing milk on the basis of farm stick readings and butterfat tests of samples drawn at the farm.

The Secretary concluded in his decision of September 30, 1952, that unaccounted for producer milk in excess of a reasonable allowance for plant loss should be Class I milk in order to assure full accounting by handlers for all of their receipts. He further concluded that two percent was a reasonable maximum allowance for this purpose. The record of this hearing provides no basis for any change in this conclusion. However, the market situation has changed significantly since the order was originally promulgated. Effective February 1, 1958, the order was amended to require a cooperative association to be the responsible handler in accounting for bulk milk picked up at the farm in trucks owned and operated by the cooperative and delivered to the approved plant of another handler for the account of the association.

The effect of this amendment, in conjunction with the application of the shrinkage provisions, is that the proponent handler has been required to account for as Class I all of his plant loss associated with milk purchased from the association. Since milk for his fluid operations is purchased exclusively from the cooperative he, in effect, has no shrinkage allowance in connection with his fluid milk operations whereas prior to February 1, 1958, he had a full 2 percent shrinkage allowance to cover losses on both his receiving and processing operations.

There is no question but that under normal circumstances losses connected with processing and packaging exceed those of the receiving operation. The existing provisions cannot be considered to assure equities as between handlers when, on the one hand, because the cooperative delivers milk to certain handlers in the names of its individual producer members such handlers have a full 2 percent shrinkage allowance and on the other hand, because the cooperative delivers milk for its own account to another handler such handler receives no shrinkage allowance. The problem therefore is one of determining an appropriate distribution of shrinkage between the receiving and transferee handler.

Experience in other Federal milk markets indicates a one-half of one percent shrinkage allowance for a receiving handler to be appropriate. Data presented on the record by the Central West Texas Producers Association further substantiates this allowance to be reasonable. Their figures show that the total shrinkage in milk volumes, as indicated by the difference between stick readings at the farm and flow meter readings in the receiving plant, is somewhat less than one-half of one percent. While losses in butterfat, as indicated by the differences in the tests of farm drawn samples and those drawn from the in-line sampler at the plant, averaged about 1.3 percent during the period June 1960 through March 1961, and exceeded 2.0 percent in four of these months it must be concluded that these butterfat losses are extreme and far in excess of normal expectation.

It seems likely that this situation is the result of inaccurate sampling and/or testing either at the farm or at the plant and the parties involved should take appropriate steps to correct the situation. In the interest of effective and equitable regulation, the shrinkage allowed a receiving handler should be limited to an amount not in excess of normal expectations. It is therefore concluded that such shrinkage allowance should be limited to one-half of one percent. The remaining one and one-half percentage shrinkage allowance should be assigned to the transferee handler to cover normal losses in processing and packaging operations.

While there is no indication on the record of any problems in connection with the shrinkage provision in cases of transfers of milk between proprietary handlers, nevertheless, the apportionment of shrinkage herein recommended is appropriate where such transfers occur. The allowance of one-half of 1 percent of shrinkage to the original receiving plant is concluded to be a reasonable allowance for receiving operations and gives assurance to the operator thereof that he will be able to account

for his actual shrinkage experience within this limit as Class II milk. It also assures the transferee handler of a reasonable share of the total allowable shrinkage. Notwithstanding, should the parties involved agree that a different proration would be more equitable between them, appropriate adjustments could be made in the price at which such milk is transferred. Where the transferor-handler is a cooperative association, however, any such adjustment is not permissible if it results in a price less than that provided by the order.

The above conclusions would decrease the shrinkage allowance on producer skim milk from 5 percent to 2 percent during the months of April, May and June. The 5 percent allowance during those months was adopted on the basis of the evidence in the original promulgation record and recognized that small handlers might find it necessary to dump limited small lots of skim milk during these months as the only economical outlet. There are now only four handlers operating plants under the order and the cooperative association supplies milk to such handlers on a day-to-day basis in accordance with their specific requirements. Hence, there is no reason for continuation of the higher shrinkage allowance for skim milk during these months.

Several exceptions were filed pointing out that the recommended order changes did not fully implement the intended application of the shrinkage provisions in the case of interhandler transfers. Exceptors requested that the allocation provisions be revised to implement the allocation of shrinkage as provided in the shrinkage provisions. The requested revision has been incorporated in the proposed order language as hereinafter set forth. In addition, certain changes have been made in the recommended language of the shrinkage provisions solely for the purpose of clarity.

6. *Modification of the conditions for pooling approved plants also meeting the pooling requirements of another Federal order.* The pooling provisions of the order should be modified to permit an approved distributing plant with a greater proportion of its Class I disposition in another marketing area, but which was pooled under this order in the most recent month, to retain pooling status under this order until the third consecutive month in which a greater volume of Class I sales is made in such other marketing area. However, it must be recognized that the provisions of the other order may require such plant to be pooled under such order. In such circumstances, the plant should be exempted from regulation under this order except for a requirement to file reports and permit verification. Provision also should be made to exempt a distributing plant doing a greater proportion of its total Class I business in this marketing area but which, nevertheless, retains pooling status for the month under another order. While Federal orders generally provide that a distributing plant meeting the pooling requirements of more than one order shall be regulated under that order covering the area in which the greater volume of Class I sales are made, nevertheless, it should be recognized that other orders may contain similar provisions to those herein proposed to deter plants from changing back and forth between two orders on a month-to-month basis.

The pooling provisions also should be modified to permit a supply plant to pool on the basis of qualifying shipments to any pool distributing plant(s). Further, a supply plant meeting the pooling requirements of both this order and another Federal order should be pooled under this order in any month in which greater qualifying shipments are made to this market than to such other market, unless such plant retains automatic status in such other market for the month on the basis of performance in previous months.

Under the existing order provisions, a distributing plant under the routine inspection of a local health authority is eligible to pool its milk in any month in which Class I milk is distributed on routes in the marketing area unless a greater volume of Class I disposition is made in another Federal order marketing area. A distributing plant under the routine inspection of other than a local health authority is eligible to pool in any month in which 15 percent or more of its total Class I disposition is made in the marketing area unless a greater volume of Class I disposition is made in another Federal order marketing area. A supply plant must make specified qualifying shipments to a pool distributing plant under the routine inspection of a local health authority to be eligible for pooling. The order provides no criteria for determination under which order a supply plant meeting the pooling requirements of both this order and another Federal order should be regulated.

A regulated handler under the North Texas order, operating packaging plants in both Fort Worth and Dallas and distributing milk in both the North Texas and Central West Texas markets, as well as in other Federal order markets, proposed that the order be amended to preclude the pooling of either of his plants under this order unless their Class I sales in this market should exceed Class I sales in the North Texas market over an extended period of time. He indicated that his sales in the two respective markets were of such nature that a small increase in sales in this market or decrease in the North Texas market could result in regulation of his Fort Worth plant under this order rather than the North Texas order. He further indicated that in order to minimize the possibility of such a change in regulation he had resorted to shifting Class I sales between his two plants. Nevertheless, he foresaw the possibility that audit adjustments could result in the removal of his plant from regulation under the North Texas order in favor of the Central West Texas order. It was this handler's position that such a shift in regulation would tend to create disorder in the two markets because of the effect on the respective market blend prices and because of the different procedures prescribed under the respective regulations for distributing returns to producers. (North Texas has a base-rating plan.)

While it is apparent from proponent's testimony that his initial proposal was made with the view that its adoption would permit him to bid in military and other government contracts in the Central West Texas market without the possibility of pooling under this order, nevertheless, it is apparent that the distribution from his plants is such that a relatively inconsequential change in the proportion of distribution as between the two markets could result in regulation under this order rather than the North Texas order. It is also possible that the plant might later shift back to North Texas on a similar basis.

A plant doing business in several Federal order markets generally should be regulated under that order under which it does the greatest proportion of its business. This is the principle under which the existing provisions were effected and this record provides no basis for changing this conclusion. Nevertheless, it must be recognized that with recent technological changes in the processing and distribution fields, milk is moved great distances and distribution routes have been greatly extended. It is apparent that while proponent has greatly increased his Central West Texas sales in recent years he does not contemplate or intend that his plant should become subject to regulation under that order. Such a change would have greater adverse affects on producers than on handlers since class prices as between the two orders are aligned. Nevertheless, it is possible, due to a management error or error on the part of a plant employee or a route salesman, that an inadvertant sale might result in an unintended change in pooling. It is also possible, as proponent suggests, that a change in classification during audit might produce the same result.

The situation can be substantially alleviated by adoption of the changes herein recommended. Under this procedure a handler would have two months warning that his plant was changing from one regulation to another, thus providing reasonable time to permit adjustment of his business in cases where such change was not contemplated or desired. At the same time this change retains the principle of regulating a plant under that order where the greater proportion of its business is done. Since government contracts normally are made for longer periods than two months there is no reason to expect that the changes recommended will have any significant effect in the length of time in which a plant is pooled in a particular market where the change in proportion of business is the result of gaining or losing a Government contract.

While the situation prompting the proposal existed only between the Central West Texas and North Texas markets, nevertheless, because of the location of the Central West Texas market in relation to other Federal order markets it is possible that a similar situation could develop with some plant now regulated under another order or with a plant now regulated under this order.

The treatment herein prescribed would be equally appropriate in such instances.

While there is no indication that the existing pooling requirements for supply plants have presented any problem it cannot be presumed that this will be true in the future. It is apparent that the market structure has changed significantly since the present order provisions were effected. It can be readily foreseen that the North Texas plant previously referred to could become fully regulated under this order. While the record does not disclose the sources of such plant's supplies, nevertheless, since the plant is under the routine inspection of the Fort Worth health department it is apparent that any supply plant connected with it could not be pooled under this order. It would be inappropriate and inequitable to require a distributing plant to pool but preclude the pooling of its supply plant. For this reason it is desirable that the pooling requirements for supply plants be modified to recognize as qualifying shipments, movements of milk to any pool distributing plant. This will permit the pooling of any supply plant meeting the pooling requirements and which might be a regular source of supply for the Fort Worth plant or any other plant which might become subject to regulation under the order.

As previously indicated the present order provides no direction as to where a supply plant performing under two orders should be pooled. This deficiency can be corrected by providing that any plant meeting the pooling requirement of both this and another order shall be pooled under this order unless greater qualifying shipments are made during the month to plants regulated under another order or the plant retains automatic pooling status under such other order by virtue of performance in a previous period. During the flush production months when milk of supply plants is least likely to be needed for fluid uses this order (as well as many other Federal orders) provides automatic pooling status for supply plants which have been closely associated with the market in the previous short production months by virtue of substantial and regular shipments to the market. Requiring a supply plant with automatic pooling status under one order to be regulated under another order on the basis of casual shipments during any flush production month would normally have an adverse affect on returns to established producers in the market to which shipments were made. It would therefore be more appropriate to permit such plant to retain pooling status during the flush production months in the market with which it had an established association and automatic pooling status. The recommended order amendments hereinafter set forth implement these conclusions.

Recommended changes in the order language, other than the provisions hereinbefore specifically discussed, are clarifying and conforming changes necessary to implement the previous conclusions. These include redrafting of the producer milk and other source milk definitions as well as minor changes in the language, but not in the application of other parts of the order.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the request to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Central West Texas Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Central West Texas Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Determination of representative period. The month of November 1961 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order amending the order regulating the handling of milk in the Central West Texas marketing area, is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on January 9, 1962.

JAMES T. RALPH,
Assistant Secretary.

Order[1] Amending the Order Regulating The Handling of Milk in the Central West Texas Marketing Area

§ 1128.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central West Texas marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area,

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreement and marketing orders have been met.

and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof the handling of milk in the Central West Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

§ 1128.7 [Amendment]

1. Delete paragraph (a) (2) of § 1128.7 and substitute therefor the following:

(2) At which milk is received from producers as defined in § 1128.10(a) and which serves as a receiving station at which producer milk is received, weighed and commingled and from which milk or skim milk (i) is moved during the month to an approved plant(s) specified in subparagraph (1) of this paragraph or paragraph (b), or (ii) was moved to any such plant(s) in an amount equal to 60 percent or more of the total receipts of producer milk during the months of October through January immediately preceding any month of April, May or June during which no milk was moved to such plant(s); or

2. Delete the number "15" as it appears in paragraph (b) of § 1128.7 and substitute therefor the number "10".

§ 1128.9 [Amendment]

3. Delete the proviso of § 1128.9(c) and substitute therefor the following: "*Provided,* That such milk shall be deemed to have been received by the cooperative association at an approved plant at the location of the plant to which it is delivered; or"

4. Delete § 1128.11 and substitute therefor the following:

§ 1128.11 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in (a) milk received at an approved plant directly from producers, (b) milk of producers diverted from an approved plant to an unapproved plant in accordance with the conditions set forth in § 1128.10(c), or (c) milk received by a cooperative association in its capacity as a handler pursuant to § 1128.9(c).

5. Delete § 1128.12 and substitute therefor the following:

§ 1128.12 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of products designated as Class I milk pursuant to § 1128.41(a) except (1) such products received from other approved plants, including milk received from a cooperative association in its capacity as a handler pursuant to § 1128.9(c), or (2) producer milk; and

(b) Products designated as Class II milk pursuant to § 1128.41 (b) (1) or (c) from any source (including those produced in the plant), which are reprocessed or converted to another product during the month.

§ 1128.41 [Amendment]

6. Delete paragraphs (a) and (b) of § 1128.41 and substitute therefor the following:

(a) Class I milk shall be: (1) All skim milk (including reconstituted skim milk) and butterfat disposed of in the form of milk, skim milk, buttermilk, flavored milk drinks, cream, sour cream and sour cream products under a Grade A label, and any mixture (except eggnog, aerated cream products and mixes for ice cream or other frozen dairy products) of cream and milk or skim milk: *Provided,* However, that when any such product is fortified with nonfat milk solids the amount of skim milk to be classified as Class I shall be only that amount equal to the weight of skim milk in an equal volume of unfortified product of the same nature and butterfat content, and (2) all skim milk and butterfat not specifically accounted for as Class II or Class II–A;

(b) Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than those specified in paragraph (a) or (c) of this section;

(2) Disposed of for livestock feed;

(3) In actual shrinkage of skim milk and butterfat, respectively, not to exceed the following;

(i) Two percent of receipts directly from producers (excluding milk diverted pursuant to § 1128.10(c); plus

(ii) 1.5 percent of bulk receipts of milk from other handlers except that where the handler is purchasing milk from a cooperative association in its capacity as a handler pursuant to § 1128.9 (c) and files with the market administrator, prior to the first day of the month, notice that he is purchasing such milk on the basis of the butterfat tests of farm drawn samples and weights determined at the farm, the applicable percentage on such milk shall be 2 percent, less

(iii) 1.5 percent of bulk transfers of milk from an approved plant to other milk plants (in the case of a cooperative association selling milk to a handler on the basis of farm weights and tests, as provided in subdivision (ii) of this subparagraph (3) the applicable percentage shall be 2.0), plus.

(iv) Shrinkage in other source milk determined pursuant to § 1128.42.

(4) In inventory of any products specified in subparagraph (a) (1) of this section on hand at the end of the month; and

(5) Skim milk contained in any fortified product designated in paragraph (a) (1) of this section in excess of the pounds of skim milk in such product classified as Class I pursuant to such subparagraph.

7. Delete § 1128.42 and substitute therefor the following:

§ 1128.42 Shrinkage on other source milk.

The market administrator shall determine the shrinkage in other source milk as follows:

(a) Compute the total shrinkage of skim milk and butterfat for each handler, and

(b) Assign a pro rata share of such shrinkage to other source milk on the basis of the percentage that such other source milk represents of total receipts at such plant to which shrinkage may be assigned to Class II pursuant to § 1128.41(b) (3).

§ 1128.43 [Amendment]

8. Delete paragraph (b) of § 1128.43.

§ 1128.45 [Amendment]

9. Add a proviso to § 1128.45 to read as follows: ": *Provided,* That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids."

§ 1128.46 [Amendment]

10a. Delete the words "from producers" as they appear in the preamble of § 1128.46.

b. In § 1128.46(a) (1) change the reference "§ 1128.41(b) (3)" to read "§ 1128.41 (b) (3) (i) through (iii)".

c. In § 1128.46(a) renumber subparagraph (5) as (6) and subparagraph (6) as (5).

11. Delete § 1128.61 and substitute therefor the following:

§ 1128.61 Plants subject to other Federal orders.

The provisions of this part shall not apply with respect to the operation of any plant specified in paragraph (a), (b), or (c) of this section except that the operator thereof shall, with respect to total receipts of skim milk and butterfat at such plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(a) An approved plant pursuant to § 1128.7 (a) (1) or (b) which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in such other Federal order marketing area than was disposed of on routes in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its Class I route disposition is made in such other marketing area unless notwithstanding the provisions of this para-

graph it is regulated under such other order.

(b) An approved plant pursuant to § 1128.7 (a) (1) or (b) which also meets the pooling requirements of another Federal order on the basis of route distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is fully regulated under such other Federal order.

(c) An approved plant pursuant to § 1128.7(a) (2) which (1) meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part or, (2) retains automatic pooling status for the month under another Federal order by virtue of its performance in previous months.

12. Delete that portion of § 1128.70 preceding paragraph (a) and substitute therefor the following:

§ 1128.70 Computation of each handler's pool obligation.

For each month, the market administrator shall compute the pool obligations of each handler as follows:

§ 1128.71 [Amendment]

13. Insert immediately following the word "payments" as it appears in paragraph (a) of § 1128.71, the word "due".

§ 1128.94 [Amendment]

14. Delete the words "value of the milk received by such handler from producers" as they appear in § 1128.94 and substitute therefor the words "pool obligation of such handler".

[F.R. Doc. 62-403; Filed, Jan. 12, 1962; 8:46 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

SOUTHERN UTE AND UTE MOUNTAIN LAND RECORDS

Transfer to Gallup Area Office

JANUARY 9, 1962.

In accordance with 25 CFR Part 120, notice is hereby given that all title source documents and land records pertaining to trust or restricted Indian-owned lands on the Southern Ute Indian Reservation in the State of Colorado and the Ute Mountain Indian Reservation in the States of Colorado and New Mexico, and including Allen Canyon allotments in the State of Utah, have been transferred from the City of Washington to the Gallup Area Office, Bureau of Indian Affairs, Gallup, New Mexico.

Effective January 1, 1962, the Gallup Area Office will be the office for the maintenance of records for all trust and restricted lands as described above.

JOHN O. CROW,
Deputy Commissioner.

[F.R. Doc. 62-416; Filed, Jan. 12, 1962; 8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

SIERRA LEONE

Foreign Social Insurance and Pension System

Section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) authorizes and requires the Secretary of Health, Education, and Welfare to find whether a foreign country has in effect a social insurance or pension system which is of general application in such country and under which periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death; and whether individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

Pursuant to authority duly vested in him by the Secretary of Health, Education, and Welfare, the Commissioner of Social Security has considered evidence submitted by Sierra Leone to the effect that Sierra Leone does not have a social insurance or pension system.

Accordingly, it is hereby determined and found that Sierra Leone does not have in effect a social insurance or pension system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

[SEAL] W. L. MITCHELL,
Commissioner of Social Security.

Approved: January 8, 1962.

ABRAHAM RIBICOFF,
Secretary of Health, Education, and Welfare.

[F.R. Doc. 62-415; Filed, Jan. 12, 1962; 8:47 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-99]

BABCOCK & WILCOX CO.

Notice of Issuance of Utilization Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 5, set forth below, to Facility License No. R-47, as amended. The license authorizes The Babcock & Wilcox Company to operate its Lynchburg Pool Reactor located near Lynchburg, Virginia. The amendment authorizes the licensee, as requested in its application for license amendment dated November 10, 1961, to use aluminum canned, graphite reflector elements in the reactor during the conduct of experiments which require that reflector elements be used to shape or thermalize the neutron flux. The Commission has found that the conduct of the proposed activities in accordance with License No. R-47, as amended, will not present undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has further found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since the operation of the reactor in accordance with the terms of the license, as amended, does not present any substantial change in the hazards to the health and safety of the public from those previously considered and evaluated in connection with the previously approved operation of the reactor.

In accordance with § 2.102(a) of the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of issuance of the license amendment upon receipt of a request therefor from the licensee or a petition to intervene pursuant to § 2.705 of the rules of practice within 30 days after the issuance of license amendment. Petitions for leave to intervene and requests for a formal hearing shall be filed in accordance with the provisions of § 2.700 of the Commission's rules of practice (10 CFR Part 2).

For further details see (a) the application for license amendment submitted by The Babcock & Wilcox Company and (b) a related hazards analysis prepared by the Research & Power Reactor Safety Branch of the Division of Licensing and Regulation, both available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of item (b) above may be obtained at the Commission's Public Document Room, or upon request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 8th day of January 1962.

For the Atomic Energy Commission.

ROBERT H. BRYAN,
Chief, Research and Power Reactor Safety Branch, Division of Licensing and Regulation.

[License No. R-47; Amdt. 5]

In addition to the activities previously authorized by the Commission in License No. R-47, as amended, The Babcock & Wilcox Company is authorized, as requested in its application for license amendment dated November 10, 1961, to use aluminum canned, graphite reflector elements in its Lynchburg Pool Reactor located near Lynchburg, Virginia, during the conduct of experiments which require that reflector elements be used to shape or thermalize the neutron flux. The reflector elements shall be used and the experiments conducted in accordance with the procedures and subject to the limitations in License No. R-47, as amended, and in The Babcock & Wilcox Company's application for license amendment dated November 10, 1961.

This amendent is effective as of the date of issuance.

Date of issuance: January 8, 1962.

For the Atomic Energy Commission.

ROBERT H. BRYAN,
Chief, Research and Power Reactor Safety Branch, Division of Licensing and Regulation.

[F.R. Doc. 62-413; Filed, Jan. 12, 1962; 8:47 a.m.]

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 257-62]

CHARLES F. SIMMS

Designation as Representative From Department of Justice on Administrative Committee of Federal Register

By virtue of the authority vested in me by section 6 of the Federal Register Act, as amended (44 U.S.C. 306), I hereby designate Charles F. Simms, Office of Legal Counsel, as the representative from the Department of Justice on the Administrative Committee of the Federal Reg-

ister in place of William O. Burtner, retired.

Dated: January 9, 1962.

ROBERT F. KENNEDY,
Attorney General.

[F.R. Doc. 62-426; Filed, Jan. 12, 1962; 8:49 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 12030]

OZARK AIR LINES, INC. "USE-IT-OR-LOSE-IT" INVESTIGATION

Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the above-entitled proceeding is assigned to be heard on January 24, 1962 at 10 a.m., e.s.t., in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the Board.

Dated at Washington, D.C., January 10, 1962.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 62-431; Filed, Jan. 12, 1962; 8:49 a.m.]

FEDERAL AVIATION AGENCY

[Reg. Docket No. 861]

INVESTIGATION OF COMPLAINT REGARDING TURBOJET OPERATIONS AT MOISANT INTERNATIONAL AIRPORT, LOUISIANA

Notice of Public Hearing

By a petition dated August 14, 1961, Rosemary and Mrs. A. Angell and 37 other persons residing east of the east-west runway of the Moisant International Airport, Kenner, Louisiana, have petitioned the Administrator of the Federal Aviation Agency to conduct an investigation and hearing of their alleged complaints and, either discontinue turbojet operations at Moisant International Airport, or revise existing patterns of take-offs and landings.

Upon review of the petition, it has been concluded that the Agency should obtain further statements, views or comments, either oral or written, of interested persons in regard to the subject matter of the petition.

Accordingly, notice is hereby given that a public hearing will be held before a representative of the Administrator at 9:30 a.m., c.s.t., on February 15, 1962, at the Hilton Hotel, 901 Airline Highway (opposite Moisant International Airport), New Orleans, Louisiana, for the purpose of receiving such statements, views, or comments.

All parties who wish to present their statements, views or comments at the public hearing should send advance written notice as soon as possible of such intentions, in duplicate, to the Docket Section, Room C-226, 1711 New York Avenue NW., Washington 25, D.C. Such notice should include the name and number of persons expected to attend, the organization, if any, represented and an estimate of the time required for the presentation of views and comments.

All comments presented at the hearing will be considered before action is taken on the subject filed petition.

Issued in Washington, D.C., on January 10, 1962.

N. E. HALABY,
Administrator.

[F.R. Doc. 62-407; Filed, Jan. 12, 1962; 8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13205 etc.; FCC 62M-34]

FRANCIS M. FITZGERALD ET AL.

Order Continuing Hearing

In re applications of Francis M. Fitzgerald, Greensboro, N.C., Docket No. 13205, File No. BP-13979; Ralph D. Epperson and Earlene S. Epperson, d/b as Frederick County Broadcasters, Winchester, Va., Docket No. 13624, File No. BP-12531; John Laurino, tr/as Virginia Regional Broadcasters, Chester, Va., Docket No. 14382, File No. BP-13752; Stuart W. Epperson, Wakefield, Va., Docket No. 14383, File No. BP-13754; York-Clover Broadcasting Co., Inc. (WYCL), York, S.C., Docket No. 14384, File No. BP-13898; Harry A. Epperson, Jr., Mount Holly, N.C., Docket No. 14385, File No. BP-14203; Boyce J. Hanna, East Gastonia, N.C., Docket No. 14386, File No. BP-14237; Wilkes Broadcasting Co., Mocksville, N.C., Docket No. 14388, File No. BP-14288; E. Raymond Parker, Gaffney, S.C., Docket No. 14389, File No. BP-14301; Risden Allen Lyon, Charlotte, N.C., Docket No. 14390, File No. BP-14661; Stuart W. Epperson, Winston-Salem, N.C., Docket No. 14391, File No. BP-14909; James P. Poston, Kernersville, N.C., Docket No. 14392, File No. BP-14918; for construction permits.

Pursuant to the agreements reached at the prehearing conference held on December 26, 1961, the evidentiary hearing in the above-entitled proceeding now scheduled for February 5, 1962, is continued to a date to be announced at the close of the further prehearing conference to be held on Monday, February 26, 1962, beginning at 10:00 a.m., in the offices of the Commission, Washington, D.C.

It is so ordered, This the 9th day of January 1962.

Released: January 10, 1962.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-421; Filed, Jan. 12, 1962; 8:48 a.m.]

[Docket No. 14407 etc.; FCC 62M-31]

GRAND BROADCASTING CO. ET AL.

Order Continuing Hearing

In re applications of Grand Broadcasting Co., Grand Rapids, Mich., Docket No. 14407, File No. BPCT-2928; Atlas Broadcasting Co., Grand Rapids, Mich., Docket No. 14408, File No. BPCT-2950; West Michigan Telecasters, Inc., Grand Rapids, Mich., Docket No. 14469, File No. BPCT-2956; MKO Broadcasting Corp., Grand Rapids, Mich., Docket No. 14470, File No. BPCT-2959; Major Television Co., Grand Rapids, Mich., Docket No. 14471, File No. BPCT-2960; Peninsular Broadcasting Co., Grand Rapids, Mich., Docket No. 14472, File No. BPCT-2962; for construction permits for new television broadcast stations.

It is ordered, This 9th day of January 1962, pursuant to the agreements reached at the prehearing conference held herein on January 8, 1962, that a further prehearing conference shall be held on January 30, 1962, commencing at 9:00 a.m., in the offices of the Commission at Washington, D.C.;

It is further ordered, That the hearing herein presently scheduled to commence on February 19, 1962, is continued without date.

Released: January 9, 1962.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-422; Filed, Jan. 12, 1962; 8:48 a.m.]

[Docket No. 14097 etc.; FCC 62M-33]

LINDSAY BROADCASTING CO. ET AL.

Order Scheduling Prehearing Conference

In re applications of Richard E. Lindsay, tr/as Lindsay Broadcasting Co., Punta Gorda, Fla., Docket No. 14097, File No. BP-12914; Peace River Broadcasting Corp., Punta Gorda, Fla., Docket No. 14098, File No. BP-13336; William H. Martin, Fort Myers, Fla., Docket No. 14100, File No. BP-13997; for construction permits.

The Hearing Examiner having under consideration:

(a) The Commission's Memorandum Opinion and Order herein (FCC 61-1497), released December 27, 1961, wherein it was ordered that the issues in the proceeding should be enlarged by the inclusion of an issue relating to the efforts made by each of the respective remaining applicants "to determine the programming needs of the area he proposes to serve and the manner in which he proposes to meet such needs;"

(b) Volume 10 of the transcript of testimony in the proceeding wherein it was ordered at page 1036 that the record in the proceeding "is closed;" and

(c) An Order of the Acting Chief Hearing Examiner (FCC 61M-2009), released December 29, 1961, wherein the time for the filing of proposed findings of fact and conclusions of law and for

replies thereto, if any, was continued to dates to be specified hereinafter by the Hearing Examiner;

It appearing, that since the Commission has added a new issue herein and required that the remaining applicants should respond thereto at an evidentiary hearing, it is necessary to reopen the record;

It further appearing, that prompt and orderly disposition of such issue would be furthered by the holding of an additional prehearing conference in this matter;

It is ordered, This 9th day of January 1962, on the Hearing Examiner's own motion that the record herein is reopened; and

It is further ordered, On the Hearing Examiner's own motion, that the remaining parties hereto or their counsel are directed to appear at a prehearing conference at the Offices of the Commission in Washington, D.C., at 10:00 a.m., on January 12, 1962, to discuss the appropriate procedures for the prompt compliance with requirements of the aforementioned Memorandum Opinion and Order of the Commission herein released December 27, 1961.

Released: January 10, 1962.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-423; Filed, Jan. 12, 1962; 8:48 a.m.]

[Docket Nos. 14360-14363; FCC 62M-32]

M & M TELECASTERS ET AL.

Statement and Order After Prehearing Conference

In re applications of L. E. Manseau and Daniel E. Molina, d/b as M & M Telecasters, Santa Maria, Calif., Docket No. 14360, File No. BPCT-2891; Mili Acquistapace, James H. Ranger, Burns Rick, Marion A. Smith, and Ed J. Zuchelli, d/b as Central Coast Television, Santa Maria, Calif., Docket No. 14361, File No. BPCT-2903; Thomas B. Friedman, tr/as Elson Electronics Co., Santa Maria, Calif., Docket No. 14362, File No. BPCT-2904; Santa Maria Telecasting Corp., Santa Maria, Calif., Docket No. 14363, File No. BPCT-2919; for construction permits for new television broadcast stations.

A prehearing conference was held on January 5, 1962. The transcript, when available, is incorporated by reference. Among other things the following timetable was set:

1. Exchange of applicants' affirmative direct written cases—by March 12, 1962, 5 p.m.
2. Receipt of notification of witnesses desired for cross-examination—by March 26, 1962.
3. Hearing—Rescheduled from January 15 to Monday, April 16, 1962 at 10 a.m., in the offices of the Commission, Washington, D.C.

So ordered, this 9th day of January 1962.

Released: January 10, 1962.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-424; Filed, Jan. 12, 1962; 8:48 a.m.]

[Docket Nos. 14473, 14474; FCC 62M-29]

PENINSULA TELEVISION RELAY CORP. AND EASTERN SHORE MICROWAVE RELAY CO.

Order Scheduling Hearing

In re applications of Peninsula Television Relay Corp., Salisbury, Md., Docket No. 14473, File Nos. 2604/2605-C1-P-60; Eastern Shore Microwave Relay Co., Salisbury, Md., Docket No. 14474, File No. 3423-C1-P-60; for construction permits for common carrier point-to-point microwave relay stations.

It is ordered, This 8th day of January 1962, that Walther W. Guenther will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on March 6, 1962, in Washington, D.C.: *And it is further ordered,* That a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m., Tuesday, February 6, 1962.

Released: January 9, 1962.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 62-425; Filed, Jan. 12, 1962; 8:48 a.m.]

FEDERAL POWER COMMISSION

[Docket No. E-7020]

PACIFIC POWER & LIGHT CO.

Notice of Application

JANUARY 8, 1962.

Take notice that on December 28, 1961, an application was filed with the Federal Power Commission, pursuant to section 204 of the Federal Power Act, by Pacific Power & Light Company (Applicant) for authorization for the issuance of securities. Applicant is a corporation organized under the laws of the State of Maine and doing business as a foreign corporation in the States of Oregon, Wyoming, Washington, California, Montana, and Idaho. Applicant proposes to amend its Certificate of Organization and By-Laws so as to increase and change the common stock which it is authorized to issue from 8,212,679 shares of common stock of the par value of $6.50 per share to 16,425,358 shares of common stock of the par value of $3.25 per share, and to split and change the number of shares of its common stock of the par value of $6.50 per share which shall be outstanding immediately prior to the becoming effective of such amendments into twice such number of its proposed new $3.25 par value common stock. After the effective date of the proposed amendments (which will require the affirmative vote of Stockholders representing a majority of the voting power) outstanding certificates for shares of the present $6.50 par value common stock will be treated as evidencing, and will automatically represent, the same number of shares of the new $3.25 par value common stock. As promptly as possible after such effective date all holders of common stock of record at the close of business on such date will be sent certificates for the additional shares of $3.25 par value common stock to which they will become entitled as a result of the two-for-one split. Stockholders will then have, together with the certificates which they will retain, two shares of $3.25 par value common stock for each share of $6.50 par value common stock held before the split. Applicant states that the proposed split of its common stock, with the consequent lower market price per share, should result in a broadening of public interest in the stock, an increase in the number of stockholders and a greater availability of shares for purchase and sale, proving beneficial to both the Stockholders and Applicant. The capital and surplus accounts of the Applicant will not be affected by the proposed split of common stock.

Any person desiring to be heard or to make any protest with reference to said application should on or before the 29th day of January 1962, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 62-391; Filed, Jan. 12, 1962; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 10, 1962.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 37505: *Substituted service—NYC&ST. L for Midwest Haulers, Inc.* Filed by Midwest Haulers, Inc. (No. 42), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Chicago, and East St. Louis, Ill., Buffalo, N.Y., Cleveland, Ohio, and Erie, Pa., on the

one hand and specified points in Illinois, Indiana, Ohio, and Pennsylvania, on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 23 to Midwest Haulers, Inc., tariff MF–I.C.C. 22.

FSA No. 37506: *Clay, kaolin or pyrophyllite from Cartersville, Ga.* Filed by O. W. South, Jr., agent (No. A4147), for interested rail carriers. Rates on clay, kaolin or pyrophyllite, as described in the application, in carloads from Cartersville, Ga., to points in southwestern territory.

Grounds for relief: Modified short-line distance formula, and grouping.

Tariff: Supplement 10 to Southern Freight Association tariff I.C.C. S–206.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 62–410; Filed, Jan. 12, 1962; 8:47 a.m.]

[Notice 584]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 10, 1962.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC 64149. By order of January 3, 1962, the Transfer Board approved the transfer to Edward Miller, Jr., doing business as Edward Miller & Son, Richmond Hill 18, N.Y., of Certificate No. MC 112744 issued March 26, 1952, in the name of Edward Miller, Sr., and Edward Miller, Jr., a partnership, doing business as Edward Miller & Son, Richmond Hill, N.Y., authorizing the transportation of household goods as defined by the Commission, over irregular routes, between New York, N.Y., and points in Nassau and Suffolk Counties, N.Y., on the one hand, and, on the other, points in New York, Connecticut, New Jersey, and those in that part of Pennsylvania on and east of U.S. Highway 15. Joseph S. Williams, Jr., Jamaica Chamber of Commerce Building, 89–31 161st Street, Jamaica 32, N.Y., attorney for applicants.

No. MC–FC 64643. By order of January 4, 1962, the Transfer Board approved the transfer to Ernest Labumbard, Gladstone, Mich., of Certificate in No. MC 115705, issued September 10, 1956, to Edward Wender, Iron Mountain, Mich., authorizing the transportation of: Fertilizer, from Madison, Wis., to points in the upper peninsula of Michigan, with no transportation for compensation on return except as otherwise authorized. Michael D. O'Hara, Spies Building, Menominee, Mich., attorney for applicants.

No. MC–FC 64649. By order of January 5, 1962, the Transfer Board approved the transfer to Vrabel Trucking Corp., Yonkers, N.Y., of Certificate in No. MC 34688, issued November 6, 1950, to Abe Seidman, Brooklyn, N.Y., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, from New York, N.Y., to points in New Jersey within 25 miles of New York, N.Y. Martin Werner, 2 West 45th Street, New York 36, N.Y., attorney for applicants.

No. MC–FC 64657. By order of January 4, 1962, the Transfer Board approved the transfer to Bruno & D'Elia, Inc., Hackensack, N.J., of Certificates Nos. MC 100031 Sub 1, MC 100031 Sub 2, and MC 100031 Sub 3, issued July 2, 1953, October 29, 1959, and August 22, 1960, respectively, to Seaboard Mill Supply, Inc., New York 5, N.Y., authorizing the transportation of cork and cork board, nails, lumber, asphaltic emulsion, in cans, paper, paper products, and printed matter, over irregular routes, between New York, N.Y., on the one hand, and, on the other, points in Essex and Union Counties, N.J., and those in that part of Bergen and Hudson Counties, N.J., not including the New York Commercial Zone as defined by the Commission; waste paper, from New York, N.Y., and points in Nassau County, N.Y., to points in Bergen, Essex, Hudson, Union, Passaic, Middlesex, Morris and Somerset Counties, N.J.; and from New York, N.Y., points in Nassau County, N.Y., and points in Bergen, Essex, Hudson, Union, Passaic, Middlesex, Morris, and Somerset Counties, N.J., to Versailles, Montville, and New Haven, Conn.; and skids, from points in Bergen, Essex, Hudson, Union, Passaic, Middlesex, Morris, and Somerset Counties, N.J., to New York, N.Y., and points in Nassau County, N.Y.; and empty skids, from Versailles, Montville, and New Haven, Conn., to points in Bergen, Essex, Hudson, Union, Passaic, Middlesex, Morris, and Somerset Counties, N.J. William D. Traub, 350 Fifth Avenue, New York 1, N.Y., representative for applicants.

No. MC–FC 64719. By order of January 3, 1962, the Transfer Board approved the transfer to G. Richard Arner, doing business as G. R. Arner, Tamaqua, Pa., of Certificate No. MC 52862 Sub 5, issued to Edward J. Boyle, doing business as E. J. Boyle, Tamaqua, Pa., authorizing the transportation of: Shale derived aggregate, in bulk, from Rahn Township, and points within five miles thereof, in Schuylkill County, Pa., to points in Delaware, Maryland, New Jersey (except those in Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden, and Burlington Counties), New York, Virginia, West Virginia, and the District of Columbia. William J. Wilcox, 624 Commonwealth Building, Allentown, Pa., attorney for applicants.

No. MC–FC 64726. By order of January 3, 1962, the Transfer Board approved the transfer to Washington Moving & Storage Co., Inc., New York, N.Y., of Certificate No. MC 95642, issued July 23, 1959, to James J. Borda, doing business as Railway Crating & Packing Co., New York, N.Y., authorizing the transportation of: Household goods, between New York, N.Y., on the one hand, and, on the other, Bethlehem, and Philadelphia, Pa., and points in Connecticut, and New Jersey. Morris Honig, 150 Broadway, New York, N.Y., attorney for applicants.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 62–411; Filed, Jan. 12, 1962; 8:47 a.m.]

[No. 33750]

FOURTH CLASS MAIL

Reformation of Rates and Other Conditions of Mailability

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 9th day of January A.D. 1962.

It appearing, that on January 2, 1962, the Postmaster General submitted to the Commission for its consent, after investigation, specific proposals for reformations of rates and other conditions of maliability of fourth class mail, including revisions of the limits of size and weight of parcel post;

It further appearing, that the Commission's consent to the establishment of the reformations is requested pursuant to that part of the paragraph under the heading "General Provisions" under the appropriations for the Post Office Department contained in Chapter IV of the Supplemental Appropriations Act, 1951, approved September 27, 1950, 64 Stat. 1050, as amended by section 213 of the Postal Rate Increase Act, 1958, 72 Stat. 143 (31 U.S.C. 695); and section 207 of the Act of February 28, 1925, 43 Stat. 1067, as amended by section 7 of the Act of May 29, 1928, 45 Stat. 942 (39 U.S.C. 247, 1958 ed.);

And it further appearing, that the proposals for revision of the maximum limits of size and weight and for rate revisions are "interdependent and inseparable," and that the Commission's jurisdiction to consent to an increase in the maximum size and weight of parcels may have been abrogated by the provisions of Public Law 199 of the 82d Congress (65 Stat. 610):

It is ordered, That no investigation be instituted at this time.

It is further ordered, That within 15 days of the date of the service of this order, the Postmaster General shall file a brief, and serve copies thereof upon those parties who attended the public conference held at the Post Office Department on December 11–12, 1961, devoted solely to the jurisdiction of this Commission to consent to his proposals in the light of the purpose and provisions of Public Law 199.

It is further ordered, That any person interested may within 10 days after service of the aforesaid brief, file with

the Commission and serve upon the Postmaster General a brief limited to the same issue.

And it is further ordered, That notice of this order be given, (1) by depositing a copy in the office of the Secretary of the Commission for public inspection, (2) by filing a copy thereof with the Director, Office of the Federal Register, (3) by serving copies thereof on the Postmaster General and the Comptroller General of the United States, and (4) by serving copies thereof on all parties who attended the public conference held on December 11–12, 1961 at the Post Office Department.

By the Commission.

[SEAL] HAROLD D. McCOY; *Secretary.*

[F.R. Doc. 62-412; Filed, Jan. 12, 1962; 8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 812-1472]

AMERICAN RESEARCH AND DEVELOPMENT CORP.

Notice of Filing of Application for an Order Exempting Proposed Transaction

JANUARY 8, 1962.

Notice is hereby given that American Research and Development Corporation ("Applicant"), The John Hancock Building, Boston 16, Mass., a Massachusetts corporation and registered closed-end, nondiversified management investment company, has filed an application under section 17(b) of the Investment Company Act of 1940 ("Act"), for an order of the Commission exempting from the provisions of section 17(a) of the Act the proposed extension of the maturity date of a promissory note in the principal amount of $50,000 issued to Applicant by Intercontinental Electronics Corporation ("Intercontinental"), an affiliated person of Applicant.

The application contains the following representations:

Intercontinental, a Delaware corporation, was organized in 1956, and is engaged in the business of the development and sale of various electronic, aircraft detection and navigation equipment. Applicant states that it owns approximately 17 percent of the outstanding voting securities of Intercontinental, and that it believes the proposed maturity date extension would be prohibited by section 17(a) (3) of the Act, unless exempted therefrom by an order of the Commission.

By an order dated December 19, 1960, the Commission exempted from the provisions of section 17(a) (3) of the Act a loan of $50,000 from the Applicant to Intercontinental evidenced by a promissory note dated December 2, 1960. The note provided for interest on the principal sum at the rate of six percent per annum, and matured December 2, 1961. Intercontinental, with the consent of Applicant, has withheld repayment of the loan pending disposition of this application, during which time Applicant does not intend to sue on the note. No other indebtedness of Intercontinental has been or will be accelerated by the note being overdue.

It is intended to extend the maturity date of the note to March 31, 1962. The extension of the maturity date of the note is proposed in order to allow the continued use of funds for working capital purposes by Intercontinental.

Applicant has determined that it would be in its best interests to divest itself of its securities investment in Intercontinental, and has made application to this Commission for an exemption of the proposed sale of its portfolio voting securities of Intercontinental to an affiliated person of Intercontinental. Pending disposition of that application, Applicant desires that Intercontinental be able to use the funds to promote the commercial development of its business enterprises.

Section 17(a) (3) of the Act, in relevant part, prohibits the borrowing of money from a registered investment company by an affiliated person thereof. Under section 17(b) of the Act, the Commission shall grant an exemption from the prohibitions of section 17(a) of the Act, if it finds that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; and that the proposed transaction is consistent with the policy of the registered investment company concerned, and consistent with the general purposes of the Act.

Notice is further given that any interested person may, not later than January 30, 1962, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon applicant. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) should be filed contemporaneously with the request. At any time after said date, as provided by Rule O-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] ORVAL L. DuBOIS, *Secretary.*

[F.R. Doc. 62-399; Filed, Jan. 12, 1962; 8:46 a.m.]

[File No. 70-4005]

COLUMBIA GAS SYSTEM, INC. AND ATLANTIC SEABOARD CORP.

Notice of Filing Regarding Issue and Sale of $6,000,000 Face Amount of Unsecured Installment Note by Subsidiary Company to Registered Holding Company

JANUARY 8, 1962.

Notice is hereby given that The Columbia Gas System, Inc. ("Columbia"), 120 East 41st Street, New York 17, N.Y., a registered holding company, and its wholly owned nonutility subsidiary company Atlantic Seaboard Corporation ("Seaboard"), 1700 MacCorkle Avenue SE., Charleston, W. Va., have filed a joint application-declaration and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(b), 9, 10, and 12(f) of the Act and Rule 43 thereunder as applicable to the proposed transaction.

All interested persons are referred to the joint application-declaration on file in the office of the Commission for a statement of the proposed transaction which is summarized as follows:

Seaboard proposes to issue and sell to Columbia and Columbia proposes to acquire, an unsecured installment promissory note in the face amount of $6,000,000. The note is to be non-registered and dated when issued. The face amount thereof will be due in twenty-five equal annual installments on January 15, of each of the years 1963 to 1987, inclusive. Interest is to be paid semi-annually at the rate of 5.1 percent per annum, the cost of money to Columbia on its last sale of debentures.

The proceeds from the sale of the note will be used by Seaboard to repay to Columbia an emergency cash advance of $6,000,000 made by Columbia to Seaboard on June 27, 1961. Columbia advised the Commission, by letter dated June 29, 1961, that it had made the emergency loan pursuant to the provisions of Rule 45(b) (3) under the Act. Such advance was made as a non-interest-bearing short-term loan in the amount of $6,000,000 to assist Seaboard in making rate refunds to its customers in the amount of $8,653,700, pursuant to an Order of the Federal Power Commission issued April 21, 1961. A part of the revenues collected by Seaboard under the contested rate was used, in lieu of long-term debt financing, for plant improvements.

It is represented that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction. The fees and expenses to be incurred by Seaboard and Columbia are estimated at $100 for each company.

Notice is further given that any interested person may, not later than January 30, 1962, request this Commission in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law which he desires to controvert; or he may request that he be notified if the Commission

should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. A copy of the request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon applicants-declarants, and proof of service (by affidavit, or in the case of an attorney-at-law, by certificate) filed or dispatched contemporaneously with the request. At any time after that date the joint application-declaration, as amended, may be granted and permitted to become effective as provided in Rule 23 of the rules and regulations promulgated under the Act; or the Commission may grant exemption from its rules as provided in Rules 20(a) and 100 thereof, or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 62-400; Filed, Jan. 12, 1962; 8:46 a.m.]

[File No. 70-4006]

NEW ORLEANS PUBLIC SERVICE INC.

Notice of Proposed Transfer of a Portion of Earned Surplus to Capital Surplus

JANUARY 8, 1962.

Notice is hereby given that New Orleans Public Service Inc. ("New Orleans"), New Orleans 9, Louisiana, a public-utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a)(2) and 7 of the Act as applicable to the proposed transaction.

All interested persons are referred to the declaration, on file at the office of the Commission, for a statement of the transaction therein proposed which is summarized as follows:

New Orleans proposes to transfer from its earned surplus account to its capital surplus account as of December 31, 1961, an aggregate of $710,264.89 which is equivalent to 50 cents per share on its outstanding no par value common stock. At October 31, 1961, its earned surplus amounted to $12,346,604, after giving effect to net income of $4,754,516 for the 12-month period ended as of that date, the payment of dividends to its preferred and common stockholders in the aggregate amount of $3,979,152, and the transfer from earned surplus to capital surplus of $355,132.

The declaration states that no State regulatory body or agency and no Federal commission or agency, other than this Commission, has jurisdiction over the proposed transaction. It is also stated that no fees or commissions are to be paid and no special and separable expenses are anticipated in connection with the proposed transaction.

Notice is further given that any interested person may, not later than January 30, 1962, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon declarant, and proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed contemporaneously with the request. At any time after said date, the declaration, as filed or as amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 62-401; Filed, Jan. 12, 1962; 8:46 a.m.]

TARIFF COMMISSION

CYLINDER, CROWN, AND SHEET GLASS

Additional Report to the President

JANUARY 10, 1962.

The U.S. Tariff Commission's report to the President supplying information additional to that given in the Commission's report on escape-clause investigation No. 7-101 concerning cylinder, crown, and sheet glass was released today. The present report was prepared in response to the President's letter to the Commission of June 29, 1961; release of the report has been authorized by the President.

Copies of the Commission's report are available upon request as long as the limited supply lasts. Address requests to the U.S. Tariff Commission, Eighth and E Streets NW., Washington 25, D.C.

[SEAL] DONN N. BENT, *Secretary.*

[F.R. Doc. 62-417; Filed, Jan. 12, 1962; 8:48 a.m.]

CUMULATIVE CODIFICATION GUIDE—JANUARY

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during January.